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EXTRAORDINARY

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PART II — Section 2

प्राधिकार से प्रकाशित

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

RAJYA SABHA

The following Bills were introduced in the Rajya Sabha on the 19th August, 2013:—

I

BILL NO. XLIX OF 2013

A Bill further to amend the Merchant Shipping Act, 1958.

BE it enacted by Parliament in the Sixty-fourth Year of the Republic of India as follows:—

1. (1) This Act may be called the Merchant Shipping (Second Amendment) Act, 2013.

Short title
and
commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

44 of 1958.

2. In the Merchant Shipping Act, 1958 (hereinafter referred to as the principal Act), in PART VII, under the heading, for the sub-heading, the following sub-heading shall be substituted, namely:—

Substitution
of sub-
heading in
PART VII.

“Classification of seamen, seafarer, maritime labour standards and prescription of minimum manning scale”.

3. In the principal Act, after section 88, the following sections shall be inserted, namely:—

Insertion of
new sections
88A and 88B.

‘88A. In this Part, unless the context otherwise requires,—

Definitions.

(a) “Declaration of Maritime Labour Compliance” means a declaration issued by the Director-General of Shipping, in respect of a ship that it meets

with the requirements and standards set out in the provisions of the Maritime Labour Convention;

(b) “Maritime Labour Certificate” means the certificate issued by the Director-General of Shipping or by any officer, authority or organisation authorised by him in this behalf, in accordance with the provisions of the Maritime Labour Convention;

(c) “Maritime Labour Convention” means the International Convention on Maritime Labour Standards signed in Geneva on the 23rd February, 2006;

(d) “seafarer” means any person who is employed or engaged or works in any capacity on board a sea going ship, but does not include—

(i) the employment or engagement or works on board in any capacity by any person in a ship of war; or

(ii) any Government ship used for military or non-commercial purposes.

Application of maritime labour standards to seafarers and ships.

88B. (1) The provisions relating to maritime labour standards as contained in the Maritime Labour Convention, shall apply to all seafarers and ships engaged in commercial activities, but does not include—

(a) ships which navigate exclusively in inland waters or waters within, or closely adjacent to, sheltered waters or areas where any law for the time being in force relating to ports apply;

(b) ships engaged in fishing activities;

(c) traditionally built ships such as dhows and junks;

(d) ships of war or naval auxiliaries.

(2) Subject to the provisions of sub-section (1), the Central Government may, on the recommendation of the Director-General of Shipping, by order, extend the provisions of the said sub-section to ships not engaged in commercial activities with such exceptions and modifications as it may consider necessary.’.

Amendment of section 91.

4. In section 91 of the principal Act, for the words “boys not under fifteen years of age”, the words “young persons not under the age of sixteen years” shall be substituted.

Amendment of section 92.

5. In section 92 of the principal Act,—

(a) in sub-section (1),—

(i) for the words “any boy”, the words “any young person” shall be substituted;

(ii) for the words “the boy is a minor”, the words “such young person” shall be substituted;

(b) in sub-section (3),—

(i) in clause (a), in sub-clause (iii), for the words “fifteen years”, the words “sixteen years” shall be substituted;

(ii) in clause (b), for the words “a minor”, the words “an young person” shall be substituted.

Amendment of section 95.

6. In section 95 of the principal Act, in the *Explanation*, clause (b) shall be omitted.

Amendment of section 99A.

7. In section 99A of the principal Act, the *Explanation* thereto shall be omitted.

- 8.** In section 101 of the principal Act, in sub-section (2),—
- (i) after clause (c), the following clause shall be inserted, namely:—
“(cc) hours of work and rest in a week, as may be prescribed;”;
- (ii) after clause (f), the following clause shall be inserted, namely:—
“(ff) the entitlement for leave, as may be prescribed;”;
- (iii) in clause (j), for the words “arising out of and”, the words “arising out of employment or” shall be substituted.
- 9.** For section 109 of the principal Act, the following section shall be substituted, namely:—
- “109. (1) No person under the age of sixteen years shall be engaged or carried to sea to work in any capacity in any ship.
- (2) (a) No young person shall be engaged in night work.
- (b) The period of night work shall be such, as may be prescribed.”.
- 10.** Section 110 of the principal Act shall be omitted.
- 11.** For section 113 of the principal Act, the following section shall be substituted, namely:—
- “113. The Central Government may make rules for the purposes of employment of young persons, prescribing—
- (a) the authorities, whose certificates of physical fitness shall be accepted for the purposes of section 111;
- (b) the form of register of young persons to be maintained in ships where there is no agreement with the crew.”.
- 12.** In section 132 of the principal Act, in sub-section (1), in clause (a), for the words “three thousand rupees”, the words “three lakh rupees” shall be substituted.
- 13.** In section 168 of the principal Act, after sub-section (6), the following sub-sections shall be inserted, namely:—
- (7) The master of the ship or any person having charge over the ship shall maintain such standards, in accordance with the provisions of the Maritime Labour Convention, for the quantity and quality of food and drinking water, and the catering standards applicable to food provided to the seamen on ships, as may be prescribed.
- (8) The master of the ship or any person having charge over the ship shall undertake educational activities to promote awareness and implementation of the standards referred to in sub-section (7).”.
- 14.** In section 173 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:—
- “(1) Every foreign-going ship carrying—
- (a) more than the prescribed number of persons (including the crew), shall have on board as part of her complement a medical officer possessing such qualifications; and
- (b) less than the prescribed number of persons shall have such medical facilities, as may be prescribed, in accordance with the provisions of the Maritime Labour Convention.”.

Amendment of section 101.

Substitution of new section for section 109.

Prohibition of engagement of underage persons in certain cases.

Omission of section 110.

Substitution of new section for section 113.

Power to make rules respecting employment of young persons.

Amendment of section 132.

Amendment of section 168.

Amendment of section 173.

Insertion of new section 176A.

Ships to possess Maritime Labour Certificate and Declaration of Maritime Labour Compliance.

15. After section 176 of the principal Act, the following section shall be inserted, namely:—

“176A. (1) All ships of five hundred tons gross or more and engaged in international voyage or operating from a port, or between ports, in another country, shall possess a Maritime Labour Certificate and a Declaration of Maritime Labour Compliance.

(2) Ships not covered under sub-section (1) shall, unless exempted by the Central Government, possess such certificate in such manner and form, as may be prescribed.

(3) The shipping master, surveyor, seamen’s welfare officer, port health officer, Indian consular officer or any other officer at any port duly authorised in this behalf by the Central Government, may inspect any ship, in such manner as may be prescribed, and the master of the ship or any person having charge over the ship shall make available to such inspecting officer, the Maritime Labour Certificate and the Declaration of Maritime Labour Compliance.”.

Insertion of new section 218A.

Power to make rules for purposes of Maritime Labour Convention.

16. After section 218 of the principal Act, the following section shall be inserted, namely:—

“218A. (1) The Central Government may, having regard to the provisions of the Maritime Labour Convention, make rules for carrying out the purposes of this Part.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(i) the hours of work and rest in a week under clause (cc) of sub-section (2) of section 101;

(ii) the entitlement for leave under clause (ff) of sub-section (2) of section 101;

(iii) the period of night work under clause (b) of sub-section (2) of section 109;

(iv) standards for the quantity and quality of food and drinking water, including the catering standards that apply to food provided to the seamen on ships, under sub-section (7) of section 168;

(v) the qualifications of medical officer under clause (a) and the medical facilities under clause (b) of sub-section (1) of section 173;

(vi) the manner and form of certificate to be provided to ships under sub-section (2) of section 176A;

(vii) the manner of conducting inspection in a ship to verify possession of the Maritime Labour Certificate and the Declaration of Maritime Labour Compliance under sub-section (3) of section 176A;

(viii) any other matter which may be or is to be prescribed relating to the Maritime Labour Convention.”.

Amendment of section 436.

17. In section 436 of the principal Act, in sub-section (2), in the Table, against serial number 25,—

(a) in column (2), the word and figures “,section 110”, occurring at both the places shall be omitted; and

(b) in column (3), the figures “110”, shall be omitted.

STATEMENT OF OBJECTS AND REASONS

The Merchant Shipping Act, 1958, as amended from time to time, provides for matters relating to merchant shipping in India. The objective of the said Act is to ensure the development and efficient maintenance of the Indian mercantile marine in a manner best suited to serve the national interests.

2. India is a member of International Labour Organisation (ILO), Geneva. India has acceded to various ILO Conventions. Now, India intends to accede to the International Labour Organisation's instrument C-186, known as the Maritime Labour Convention, 2006 (herein referred to as the MLC). This Convention is considered as the 'Bill of Rights' for the seafarers across the world, given that shipping, as an industry, is, intrinsically, global in nature. The MLC provides for international standards for the living and working conditions, of seafarers, including their food, accommodation, medical care, repatriation, social security, and recruitment.

3. The main purposes of the said Convention are:

(i) to bring the system of seamen's protection contained in the existing labour standards closer to the workers concerned, in a form consistent with the rapidly developing and globalised sector; and

(ii) to improve the applicability of the system so that ship owners and governments interested in providing decent conditions of work to their respective national seafarers do not have to bear an unequal burden in ensuring their protection.

4. Paragraph 4 of Article II of the said Convention provides that except as expressly provided for otherwise, the provisions of the said Convention applies to all ships, whether publicly or privately owned, ordinarily engaged in commercial activities, other than ships engaged in fishing or in similar pursuits and traditionally built dhows and junks, but does not apply to warships or naval auxiliaries.

5. On ratification of the MLC, India will ensure an improvement in the working and living conditions, and employment rights of Indian national seafarers, and provide, *inter alia*, the following benefits to them:

(a) safe and secure workplace on a ship;

(b) fair terms of employment;

(c) decent working and living conditions on a ship; and

(d) right to health protection, medical care and other social protection.

6. The Central Government has approved the ratification of the MLC. Therefore, it is proposed to amend the Merchant Shipping Act, 1958, to make enabling provisions for implementation and enforcement of the MLC; and thereby making it mandatory for Indian flag vessels to comply with the provisions of the said Convention and to obtain a Maritime Labour Certificate to that effect for the Indian flag vessels.

7. Under the provisions of the Merchant Shipping (Second Amendment) Bill, 2013, every Indian flag vessel of 500 gross tonnage or more and engaged in international voyage(s), would be issued with a Maritime Labour Certificate after an inspection of the ship concerned. This will enable them to get preferential treatment and exemption from their inspection for this purpose at foreign ports thereby reducing operational time and transaction costs for them. Further, India will be able to ensure that all foreign flag vessels entering the territorial

waters of India, or any marine areas adjacent thereto, over which India has, or may hereafter have an exclusive jurisdiction, are subject to an inspection under the MLC, by which the rights of all seafarers regardless of their nationality are protected.

8. The Bill seeks to achieve the above objectives.

G. K. VASAN

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 16 of the Bill seeks to insert a new section 218A relating to power to make rules for the purposes of Maritime Labour Convention in the Merchant Shipping Act, 1958. Sub-clause (1) of the said new section 218A empowers the Central Government, having regard to the provisions of the Maritime Labour Convention, 2006, to make rules for carrying out the purposes of Part VII relating to seamen and apprentices. Sub-clause (2) specifies the matters in respect of which such rules may be made. These matters, *inter alia*, include : (i) the hours of work and rest in a week under clause (cc) of sub-section (2) of section 101; (ii) the entitlement for leave under clause (ff) of sub-section (2) of section 101; (iii) the period of night work under clause (b) of sub-section (2) of section 109; (iv) the standards for the quantity and quality of food and drinking water, including the catering standards that apply to food provided to the seamen on ships, under sub-section (7) of section 168; (v) the qualifications of medical officer under clause (a) and the medical facilities under clause (b) of sub-section (1) of section 173; (vi) the manner and form of certificate to be provided to ships under sub-section (2) of section 176A; (vii) the manner of conducting inspection in a ship to verify possession of the Maritime Labour Certificate and the Declaration of Maritime Labour Compliance under sub-section (3) of section 176A; and (viii) any other matter, which may be or is to be prescribed relating to the Maritime Labour Convention.

2. The matters in respect of which rules may be made are matters of procedure or administrative details and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

II

BILL NO. LIII OF 2013

A Bill further to amend the Prevention of Corruption Act, 1988.

BE it enacted by Parliament in the Sixty-fourth Year of the Republic of India as follows:—

Short title and commencement.

1. (1) This Act may be called the Prevention of Corruption (Amendment) Act, 2013.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Amendment of section 5.

2. In the Prevention of Corruption Act, 1988 (hereinafter referred to as the principal Act), in section 5, sub-section (6) shall be omitted. 49 of 1988.

Substitution of new sections for sections 7, 8, 9 and 10.

3. For sections 7, 8, 9 and 10 of the principal Act, the following sections shall be substituted, namely:—

Offence relating to public servant being bribed.

7. (1) Any person, being, or expecting to be, a public servant who,—

(a) requests any person for, or obtains or agrees to receive or accepts or attempts to obtain from any person, any financial or other advantage, intending that, in consequence, a relevant public function or activity would be performed improperly either by himself or by another public servant; or

(b) requests for, or obtains or agrees to receive or accepts or attempts to obtain, a financial or other advantage from any person and the request, agreement,

acceptance or attempt itself constitutes the improper performance of a relevant public function or activity; or

(c) requests for, or obtains or agrees to receive or accepts or attempts to obtain, a financial or other advantage as a reward for the improper performance (whether by himself or by another public servant) of a relevant public function or activity; or

(d) performs, or induces another public servant to perform, improperly a relevant public function or activity in anticipation of or in consequence of requesting, agreeing to receive or accepting a financial or other advantage from any person,

shall be punishable, with imprisonment which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

Explanation 1.—It shall be immaterial whether—

(a) such person being, or expecting to be, a public servant requests or obtains or agrees to receive or accepts, or attempts to obtain (or is to request, agree to receive, or accept) the advantage directly or through a third party;

(b) the financial or other advantage is, or is to be, for the benefit of such person being or expecting to be, a public servant or another person.

Explanation 2.—It shall be immaterial, whether such person being, or expecting to be, a public servant knows or believes that the performance of the public function or activity is improper or whether the public servant who is induced to perform improperly a relevant public function or activity knows or believes that the performance of the public function or activity is improper.

Explanation 3.—"Expecting to be a public servants" If a person not expecting to be in office agrees to receive or accepts or attempts to obtain from any person, any other financial or other advantage by deceiving such other person into a belief that he is about to be in office, and that he will then serve him, he may be guilty of cheating, but he is not guilty of the offence defined in this section.

Explanation 4.—Where a public servant induces a person erroneously to believe that his influence with the Government has obtained a title or other benefit for that person and thus induces that person to give the public servant, any financial or other advantage as a reward for this service, the public servant has committed an offence under this section.

(2) For the purposes of this Act,—

(a) a function or activity is a public function or activity, if—

(i) the function or activity is of a public nature;

(ii) the function or activity is performed in the course of a person's employment as a public servant;

(iii) the person performing the function or activity is expected to perform it impartially and in good faith; and

(iv) the person performing the function or activity is in a position of trust by virtue of performing it;

(b) a public function or activity is performed improperly, if—

(i) it is performed in breach of a relevant expectation; and

(ii) there is a failure to perform the function or activity and that failure is itself a breach of a relevant expectation;

(c) "relevant expectation",—

(i) in relation to a public function or activity performed, means the performing of the public function or activity impartially or in good faith, as the case may be;

(ii) in relation to a public function or activity performed in a position of trust (by virtue of performing such function or activity), means any expectation as to the manner in which, or the reasons for which, the function or activity will be performed that arises from the position of such trust;

(d) anything that a public servant does, or omits to do, arising from or in connection with that person's past performance of a public function or activity shall be treated as being done, or omitted, by that person in the performance of that function or activity;

(e) the test of what is expected is a test of what a reasonable person in India would expect in relation to the performance of the type of public function or activity concerned.

8. Any person who—

(a) offers, promises or gives a financial or other advantage to another person, and intends such financial or other advantage—

(i) to induce a public servant to perform improperly a public function or activity; or

(ii) to reward such public servant for the improper performance of such public function or activity; or

(b) offers, promises or gives a financial or other advantage to a public servant and knows or believes that the acceptance of such financial or other advantage by the public servant would itself constitute the improper performance of a relevant public function or activity,

shall be punishable with imprisonment which shall not be less than three years but which may extend to seven years and shall also be liable to fine:

Provided that when the offence under this section has been committed by a commercial organisation, such commercial organisations shall be punishable with fine.

Explanation.—It shall be immaterial whether the person to whom the financial or other advantage is offered, promised or given is the same person as the person who is to perform, or has performed, the public function or activity concerned, and, it shall also be immaterial whether such financial or other advantage is offered, promised or given by the person directly or through a third party.

Offence relating to bribing of a public servant.

9. (1) A commercial organisation shall be guilty of an offence and shall be punishable with fine, if any person associated with the commercial organisation offers, promises or gives a financial or other advantage to a public servant intending—

(a) to obtain or retain business for such commercial organisation; and

(b) to obtain or retain an advantage in the conduct of business for such commercial organisation:

Provided that it shall be a defence for the commercial organisation to prove that it had in place adequate procedures designed to prevent persons associated with it from undertaking such conduct.

(2) For the purposes of this section, a person offers, promises or gives a financial or other advantage to a public servant if, and only if, such person is, or would be, guilty of an offence under section 8, whether or not the person has been prosecuted for such an offence.

(3) For the purposes of section 8 and this section,—

(a) "commercial organisation" means—

(i) a body which is incorporated in India and which carries on a business, whether in India or outside India;

(ii) any other body which is incorporated outside India and which carries on a business, or part of a business, in any part of India;

(iii) a partnership firm or any association of persons formed in India and which carries on a business (whether in India or outside India); or

(iv) any other partnership or association of persons which is formed outside India and which carries on a business, or part of a business, in any part of India;

(b) "business" includes a trade or profession or providing service including charitable service;

(c) a person is said to be associated with the commercial organisation if, disregarding any offer, promise or giving a financial or other advantage which constitutes offence under sub-section (1), such person is a person who performs services for or on behalf of the commercial organisation.

Explanation 1.—The capacity in which the person performs services for or on behalf of the commercial organisation shall not matter irrespective of whether such person is employee or agent or subsidiary of such commercial organisation.

Explanation 2.—Whether or not the person is a person who performs services for or on behalf of the commercial organisation is to be determined by reference to all the relevant circumstances and not merely by reference to the nature of the relationship between such person and the commercial organisation.

Explanation 3.—If the person is an employee of the commercial organisation, it shall be presumed unless the contrary is proved that such person is a person who performs services for or on behalf of the commercial organisation.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the offence under section 8 and this section shall be cognizable.

10. (1) Where a commercial organisation has been guilty of an offence under section 9, every person who at the time the offence was committed was in charge of, and was responsible to, the commercial organisation for the conduct of the business of the commercial organisation shall be deemed to be guilty of the offence and shall be punishable with imprisonment which shall not be less than three years but which may extend to seven years and shall also be liable to fine:

Offence relating to bribing a public servant by a commercial organisation.

Person in charge of commercial organisation to be guilty of offence.

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he has exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under section 9 has been committed by a commercial organisation and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any director, manager, secretary or other officer of the commercial organisation, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly under this section.

Explanation.—For the purposes of this section, "director", in relation to a firm, means a partner in the firm.'

Omission of section 11.

4. Section 11 of the principal Act shall be omitted.

Substitution of new section for section 12.

5. For section 12 of the principal Act, the following section shall be substituted, namely:—

Punishment for abetment of offences defined in the Act.

"12. Whoever abets any offence punishable under this Act, whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall be not less than three years but which may extend to seven years and shall also be liable to fine."

Amendment of section 13.

6. For sub-section (1) of section 13 of the principal Act, the following shall be substituted, namely:—

(1) A public servant is said to commit the offence of criminal misconduct,—

(a) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do; or

(b) if he intentionally enriches himself illicitly during the period of his office and, he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.

Explanation.—For the purpose of this section, "known sources of income" means income received from any lawful source.'

Substitution of new section for section 14.

7. For section 14 of the principal Act, the following section shall be substituted, namely:—

Punishment for habitual offender.

"14. Whoever convicted of an offence under this Act subsequently commits an offence punishable under this Act, shall be punishable with imprisonment for a term which shall be not less than three years but which may extend to ten years and shall also be liable to fine."

Amendment of section 15.

8. In section 15, for the words, brackets and letters "clause (c) or clause (d)", the word, brackets and letter "clause (a)" shall be substituted.

Insertion of new Chapter IVA.

9. After Chapter IV of the principal Act, the following Chapter shall be inserted, namely:—

'CHAPTER IV A

ATTACHMENT AND FORFEITURE OF PROPERTY

Definitions.

18A. In this Chapter, unless the context otherwise requires,—

(1) "date of termination of criminal proceedings" means—

(a) where such proceedings are taken to the Supreme Court in appeal, whether on the certificate of a High Court or otherwise, the date on which the Supreme Court passes its final orders in such appeal; or

(b) where such proceedings are taken to the High Court and orders disposing of the proceedings are passed thereon and—

(i) no application for a certificate for leave to appeal to the Supreme Court is made to the High Court, the day immediately following the expiry of ninety days from the date on which the High Court passes its final orders;

(ii) an application for a certificate for leave to appeal to the Supreme Court has been refused by the High Court, the day immediately following the expiry of sixty days from the date of the refusal of the certificate;

(iii) a certificate for leave to appeal to the Supreme Court has been granted by the High Court, but no appeal is lodged in the Supreme Court, the day immediately following the expiry of thirty days from the date of the order granting the certificate; or

(c) where such proceedings are not taken to the High Court, the day immediately following the expiry of sixty days from the date of the last judgment or order of a special Judge in the proceedings;

(2) "property" means any property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and includes deeds and instruments evidencing title to, or interest in such property or assets.

18B. (1) Where any police officer authorised to investigate any offence under section 17 has reason to believe that any person has committed any offence under this Act and such person has procured money or other property by means of such offence, the Investigating Officer may, with the prior approval of the Central Government or the State Government, as the case may be, at any stage, whether or not any court has taken cognizance, move an application before the special Judge appointed under section 3 for attachment of the said money or property or if such money or property cannot, for any reason, be attached, other property of the said person of value as nearly as may be equivalent to that of the aforesaid money or other property.

Application
for
attachment.

(2) An application under sub-section (1) shall be accompanied by one or more affidavits, stating the grounds on which the belief that the said person has committed any offence under this Act is founded and the amount of money or value of other property believed to have been procured by means of the offence.

(3) The application shall also furnish—

(a) any information available as to the location for the time being of any such money or other property, and shall, if necessary, give particulars, including the estimated value, of other property of the said person;

(b) the names and addresses of any other persons believed to have or to be likely to claim, any interest or title in the property of the said person.

18C. (1) Upon receipt of any application under section 18B, the special Judge shall, unless for reasons to be recorded in writing, he is of the opinion that there exists no *prima facie* grounds for believing that the person in respect of whom the application is made has committed any offence under this Act or that such person has procured thereby any money or other property, pass without delay an *ad interim* order attaching the money or other property alleged to have been so procured, or if it transpires that such money or other property is not available for attachment, such other property of such person of equivalent value as the special Judge may think fit:

Ad interim
attachment.

Provided that the special Judge may, if he thinks fit, before passing such order, and before refusing to pass such order, examine the person or persons making the affidavit accompanying the application.

(2) At the same time as he passes an order under sub-section (1), the special Judge shall issue to the person whose money or other property is being attached, a notice accompanied by copies of the order, the application, affidavits and of the evidence, if any, recorded, calling upon him to show cause why the order should not be made absolute.

(3) The special Judge shall also issue notices, accompanied by copies of the documents accompanying the notice under sub-section (2), to all persons represented to him as having or being likely to claim, any interest or title in the property of the person to whom notice is issued under the said sub-section calling upon each such person to appear on the same date as specified in the notice under the said sub-section and make objection if he so desires to the attachment of the property or any portion thereof on the ground that he has an interest in such property or portion thereof.

(4) Any person claiming an interest in the attached property or any portion thereof may, notwithstanding that no notice has been served upon him under this section, make an objection as aforesaid to the special Judge at any time before an order is passed under sub-section (1) or sub-section (3), as the case may be, of section 18D.

Inquiry of objections to attachment.

18D. (1) If no cause is shown and no objections are made under section 18C on or before the specified date in the notice issued under sub-section (2) of section 18C, the special Judge shall forthwith pass an order making the *ad interim* order of attachment absolute.

(2) If cause is shown or any objections are made under section 18C, the special Judge shall proceed to inquire the same and in so doing, as regards the examination of the parties and in all other respects he shall, subject to the provisions of this Chapter, follow the procedure and exercise all the powers of a court in hearing a suit under the Code of Civil Procedure, 1908 and any person making an objection under section 18C shall be required to adduce evidence to show that on the date of the attachment he had some interest in the property attached.

5 of 1908.

(3) After inquiry under sub-section (2), the special Judge shall pass an order either making the *ad interim* order of attachment absolute or varying it by releasing a portion of the property from attachment or withdrawing the order:

Provided that the special Judge shall not—

(a) release from attachment any interest which he is satisfied that the person believed to have committed an offence under this Act, has in the property, unless he is also satisfied that there will remain under attachment an amount of the said person's property of value not less than that of the property believed to have been procured by the said person by means of the offence; or

(b) withdraw the order of attachment unless he is satisfied that the said person has not by means of the offence procured any money or other property.

Attachment of property of *mala fide* transferees.

18E. (1) Where the assets available for attachment of a person believed to have committed any offence under this Act are found to be less than the amount or value which he is believed to have procured by means of such offence, and where the special Judge is satisfied, by affidavit or otherwise, that there is reasonable cause for believing that the said person has, after the date on which the offence is alleged to have been committed, transferred any of his property otherwise than in good faith and for consideration, the special Judge may by notice require any transferee of such property (whether or not he received the property directly from the said person) to appear on a date to be specified in the notice and show cause why so much of the transferee's property as is equivalent to the proper value of property transferred should not be attached.

(2) Where the said transferee does not appear and show cause on the date specified in the notice under sub-section (1), or where after inquiry in the manner provided in sub-section (2) of section 18D, the special Judge is satisfied that the transfer of the property to the said transferee was not in good faith and for consideration, the special Judge shall order the attachment of so much of the said transferee's property as is, in the opinion of the special Judge equivalent to the proper value of the property, transferred.

5 of 1908.	<p>18F. An order of attachment of property under this Chapter shall be carried into effect, so far as may be practicable, in the manner provided in the Code of Civil Procedure, 1908 for the attachment of property in execution of a decree.</p>	Execution of orders of attachment.
	<p>18G. Any person whose property has been or is about to be attached under this Chapter may, at any time, apply to the special Judge to be permitted to give security in lieu of such attachment and where the security offered and given is in the opinion of the special Judge, satisfactory and sufficient, he may withdraw or, as the case may be, refrain from passing the order of attachment.</p>	Security in lieu of attachment.
	<p>18H. (1) The special Judge may, on the application of any person interested in any property attached under this Chapter and after giving the officer or any other person authorised in this behalf by the State Government or, as the case may be, the Central Government, an opportunity of being heard, make such orders as the special Judge considers just and reasonable for—</p> <p style="padding-left: 40px;">(a) providing from such attached property, as the applicant claims, an interest in, such sums as may be reasonably necessary for the maintenance of the applicant and of his family, and for the expenses connected with the defence of the applicant where criminal proceedings have been instituted against him in any court for the offence;</p> <p style="padding-left: 40px;">(b) safeguarding, so far as may be practicable, the interests of any business affected by the attachment, and in particular, the interests of any partners in such business.</p> <p>(2) Where it appears to the special Judge to be just and convenient, he may, by order appoint a receiver to manage any property attached under this Chapter in accordance with such instructions as the special Judge may, from time to time, think fit to give and where a receiver is so appointed, the provisions of rules 2, 3, 4 and 5 of Order XL of the First Schedule to the Code of Civil Procedure, 1908 shall be applicable.</p>	Administration of attachment.
5 of 1908.	<p>18-I. An order of attachment of property under this Act shall, unless it is withdrawn earlier in accordance with the provisions of this Act, continue in force—</p> <p style="padding-left: 40px;">(a) where no court has taken cognizance of the alleged offence at the time when the order is applied for, one year from the date of the order under sub-section (1) of section 18C or sub-section (2) of section 18E, as the case may be, unless cognizance of such offence is, in the meantime taken by the court, or unless the special Judge on application by the Investigating Officer showing reasons for non-completion of the investigation and if the Judge is satisfied that reasonable grounds exist, extends further period of attachment not exceeding six months;</p> <p style="padding-left: 40px;">(b) where a court has taken cognizance of the alleged offence whether before or after the time when the order of attachment of property is made by the court, until orders are passed by the special Judge in accordance with the provisions of this Act, upon the termination of the criminal proceedings in respect of the disposal of such property.</p>	Duration of attachment.
	<p>18J. (1) The State Government or, as the case may be, the Central Government or any person who has shown cause under section 18C or section 18E or has made an objection under section 18C or has made an application under section 18G or section 18H, if aggrieved by any order of the special Judge under any of the foregoing provisions of this Chapter, may appeal to the High Court within thirty days from the date on which the order appealed against was passed.</p> <p>(2) Upon any appeal under sub-section (1), the High Court may, after giving such parties as it thinks proper an opportunity of being heard, pass such orders as it thinks fit.</p>	Appeals.

(3) Until an appeal under sub-section (1) is finally disposed of by the High Court, no court shall, otherwise than in accordance with the provisions of section 18G or section 18L, pass any order in respect of the attachment of the property to which the appeal relates.

Court to evaluate property procured by offence.

18K. (1) Where before judgment is pronounced in any criminal trial for any offence under this Act, it is represented to the court that an order of attachment of property has been passed under this Chapter in connection with such offence, the court shall, if it is convicting an accused, record a finding as to the amount of money or value of other property procured by the accused by means of the offence.

(2) In any appeal or revisional proceedings against such conviction, the appellate or revisional court shall unless it sets aside the conviction, either confirm such finding or modify it in such manner as it thinks proper.

(3) In any appeal or revisional proceedings against an order of acquittal passed in a trial, such as, is referred to in sub-section (1), the appellate or revisional court, if it convicts the accused, shall record a finding, such as is referred to in that sub-section.

(4) Where the accused is convicted of any offence under this Act and where it appears that the offence has caused loss to more than one Government or authority or corporation or Government company referred to in sub-clause (iii) of clause (c) of section 2, the court shall, in the concerned finding referred to in the foregoing sub-sections, indicate the amount of loss sustained by each such Government or authority or corporation or Government company, as the case may be.

(5) Where the accused is convicted in the same trial of one or more offences specified under this Act, the court shall, in the concerned finding referred to in the foregoing sub-sections, indicate separately the amounts procured by means of the two classes of offences.

Disposal of attached property upon termination of criminal proceedings.

18L. (1) Upon the termination of any criminal proceedings for any offence under this Act in respect of which any order of attachment of property has been made under this Chapter or security given to in lieu thereof, the officer or any other person authorised by the State Government or, as the case may be, the Central Government in this behalf shall, without delay inform the special Judge, and shall where criminal proceedings have been taken in any court, furnish the special Judge with a copy of the judgment or order of the trying court and with copies of the judgment or orders, if any, of the appellate or revisional court thereon.

(2) Where it is reported by the officer or any other person referred to in sub-section (1) to the special Judge that cognizance of the alleged offence has not been taken or where the final judgment or order of the court is one of acquittal, the special Judge shall forthwith withdraw any orders of attachment of property made in connection with the offence, or where security has been given in lieu of such attachment, order such security to be returned.

(3) Where the final judgment or order of the court is one of conviction, the special Judge shall order that from the property of the convicted person attached under this Chapter or out of the security given in lieu of such attachment, there shall be forfeited to the Central Government or the State Government, as the case may be, such amount or value as is found in the final judgment or order of the court in pursuance of section 18K, to have been procured by the convicted person by means of the offence, together with the costs of attachment as determined by the special Judge and where the final judgment or order of the court has imposed or upheld a sentence of fine on the said person (whether alone or in conjunction with any other punishment), the special Judge may order, without prejudice to any other mode of recovery, that the said fine shall be recovered from the residue of the said attached property or the security given in lieu of attachment.

(4) Where the amounts ordered to be forfeited or recovered under sub-section (3) exceed the value of the property of the convicted person attached, and where the property of any transferee of the convicted person has been attached under section 18E, the special Judge shall order that the balance of the amount ordered to be forfeited under sub-section (3) together with the costs of attachment of the transferee's property as determined by the special Judge shall be forfeited to the Government from the

attached property of the transferee or out of the security given in lieu of such attachment, and the special Judge may order without prejudice to any other mode of recovery that any fine referred to in sub-section (3) or any portion thereof not recovered under that sub-section shall be recovered from the attached property of the transferee or out of the security given in lieu of such attachment.

(5) If any property remains under attachment in respect of any offence under this Act or any security given to in lieu of such attachment remains with the special Judge after his orders under sub-sections (3) and (4) have been carried into effect, the order of attachment in respect of such property remaining shall be forthwith withdrawn or, as the case may be, the remainder of the security shall be returned, under the orders of the special Judge.

(6) Every sum ordered to be forfeited under this section in connection with any offence under this Act shall, after deduction of the costs of attachment as determined by the special Judge, be credited to the Government or authority or corporation or Government company referred to in sub-clause (iii) of clause (c) of section 2 of the Act, to which the offence has caused loss, or where there is more than one such Government or authority or corporation or Government company, as the case may be, the sum shall after such deduction as aforesaid, be distributed among them in proportion to the loss sustained by each.

18M. Save as provided in section 18J and notwithstanding anything contained in any other law,—

Bar to other proceedings.

(a) no suit or other legal proceeding shall be maintainable in any court—

(i) in respect of any property ordered to be forfeited under section 18L, or which has been taken in recovery of fine in pursuance of an order under that section; or

(ii) while any other property is attached under this Chapter, in respect of such other property,

by any person upon whom a notice has been served under section 18C or section 18E or who has made an objection under sub-section (4) of section 18C; and

(b) no court shall, in any legal proceeding or otherwise, pass any decree or order, other than a final decree to a suit by a person not being a person referred to in clause (a), which shall have the effect of nullifying or affecting in any way any subsisting order of attachment of property under this Chapter, or the right of the special Judge to hold security in lieu of any such order of attachment.

18N. No suit, prosecution or other legal proceeding shall lie against any person for anything in good faith done or intended to be done in pursuance of this Chapter.

Protection of action taken in good faith.

10. In section 19 of the principal Act, in sub-section (1),—

Amendment of section 19.

(i) for the words and figures "sections 7, 10, 11, 13 and 15", the words and figures "sections 7, 13 and 15" shall be substituted;

(ii) in clause (a), for the words "who is employed", the words "who is employed, or as the case may be, was at the time of commission of the alleged offence employed" shall be substituted;

(iii) in clause (b), for the words "who is employed", the words "who is employed, or as the case may be, was at the time of commission of the alleged offence employed" shall be substituted;

(iv) after clause (c), the following provisos shall be inserted, namely:—

Provided that no request can be made, by a person other than a police officer or an officer of an investigation agency or other law enforcement authority, to the appropriate Government or competent authority, as the case may be, for

the previous sanction of such Government or authority for taking cognizance by the court of any of the offences specified in this sub-section, unless—

(i) such person has filed a complaint in a competent court about the alleged offences for which the public servant is sought to be prosecuted; and

(ii) the court has not dismissed the complaint under section 203 of the Code of Criminal Procedure, 1973 and directed the complainant to obtain the sanction for prosecution against the public servant for further proceeding:

2 of 1974.

Provided further that in the case of request from the person other than a police officer or an officer of an investigating agency or other law enforcement authority, the appropriate Government or competent authority shall not accord sanction to prosecute a public servant without providing an opportunity of being heard to the concerned public servant:

Provided also that the appropriate Government or the competent authority, as the case may be, shall convey its decision under this sub-section within a period of three months, which may, for reasons to be recorded in writing by the appropriate Government or the competent authority, that the consultation with the Attorney General or the Advocate General, as the case may be, is required, be extended by a further period of one month."

Substitution of new section for section 20.

11. For section 20 of the principal Act, the following section shall be substituted, namely:—

Presumption where public servant accepts financial or other advantage or any valuable thing.

"20. Where, in any trial of an offence punishable under section 7, it is proved that an accused person has accepted or obtained or has agreed to receive or attempted to obtain for himself, or for any other person, any financial or other advantage from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that financial or other advantage, as the case may be, intending that, in consequence, a relevant public function or activity would be performed improperly either by himself or by another public servant."

Omission of section 24.

12. Section 24 shall be omitted.

Amendment of Ordinance.

13. In the Criminal Law Amendment Ordinance, 1944, in the Schedule,—

38 of 1944.

(i) paragraph 4A shall be omitted;

(ii) in paragraph 5, for the words, figures and letter "items 2, 3, 4 and 4A", the words and figures "items 2, 3 and 4" shall be substituted.

Amendment of Act 25 of 1946.

14. In the Delhi Special Police Establishment Act, 1946, in section 6A, in sub-section (1), after the words "where such allegation relates to", the words "the persons who are or have been" shall be inserted.

STATEMENT OF OBJECTS AND REASONS

The Prevention of Corruption Act, 1988 provides for prevention of corruption and for matters connected therewith. The ratification by India of the United Nations Convention Against Corruption, the international practice on treatment of the offence of bribery and corruption and judicial pronouncements have necessitated a review of the existing provisions of the Act and the need to amend it so as to fill in gaps in description and coverage of the offence of bribery so as to bring it in line with the current international practice and also to meet more effectively, the country's obligations under the aforesaid Convention. Hence, the present Bill.

2. The salient features of the Bill, *inter alia*, are as follows:—

(a) section 7 of the Act at present covers the offence of public servant taking gratification other than legal remuneration in respect of an official act. The definition of offence is proposed to be substituted by a new comprehensive definition which covers all aspects of passive bribery, including the solicitation and acceptance of bribe through intermediaries and also acts of public servants acting outside their competence;

(b) the Act at present does not contain any provisions directly dealing with active domestic bribery, that is, the offence of giving bribe. Section 12 of the Act which provides for punishment for abetment of offences defined in section 7 or section 11, covers the offence indirectly. Section 24 provides that a statement made by a bribe-giver in any proceeding against a public servant for an offence under sections 7 to 11, 13 and 15 of the Act shall not subject him to prosecution under section 12. Experience has shown that in a vast majority of cases, the bribe-giver goes scot free by taking resort to the provisions of section 24 and it becomes increasingly difficult to tackle consensual bribery. The aforesaid Convention enjoins that the promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, be made a criminal offence. Accordingly, it is proposed to substitute a new section 8 to meet the said obligation;

(c) as the proposed new definitions of bribery, both as regards the solicitation and acceptance of undue advantage and as regards the promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, are found to be comprehensive enough to cover all offences presently provided in section 8 which covers taking gratification, in order, by corrupt or illegal means, to influence public servant; section 9 which covers taking gratification, for exercise of personal influence with public servant; section 10 which provides for punishment for abetment by public servant of offences defined in section 8 or section 9; and section 11 which provides for public servant obtaining valuable thing without consideration from person concerned in proceeding or business transacted by such public servant; and also the offences presently defined in clauses (a), (b) and (d) of sub-section (1) of section 13 of the Act which covers criminal misconduct by a public servant, it is proposed to omit the said sections;

(d) it is proposed to substitute section 9 to provide punishment for the offence relating to bribing a public servant by a commercial organisation. A commercial organisation will be guilty of this offence if any person associated with it offers, promises or gives a financial or other advantage to a public servant intending to obtain or retain business or some advantage in the conduct of business for the commercial organisation. The proposed section 10 provides for punishment of persons in charge of a commercial organisation which has been guilty of the offence under the proposed section 9;

(e) section 12 at present provides for punishment for abetment of offences defined in section 7 or section 11. It is proposed to substitute section 12 of the Act to provide punishment for abetment of all offences under the Act;

(f) it is proposed to substitute sub-section (1) of section 13 with a new sub-section so as to omit the existing clauses (a), (b) and (d) of sub-section (1) as mentioned

above; to incorporate the element of intentional enrichment in the existing clause (e) relating to possession of disproportionate assets by a public servant; and to modify the definition of "known sources of income" as contained in *Explanation*, to mean income received from any lawful source, that is, by doing away with the requirement of intimation in accordance with any law, rules or orders applicable to a public servant;

(g) section 14 at present provides for habitual commission of offences under sections 8, 9 and 12. It is proposed to substitute section 14 of the Act to provide punishment for habitual commission of all offences under the Act;

(h) the Prevention of Corruption Act, at present, does not specifically provide for the confiscation of bribe and the proceeds of bribery. A Bill, namely, the Prevention of Corruption (Amendment) Bill, 2008, to amend the Prevention of Corruption Act, 1988, providing, *inter alia*, for insertion of a new Chapter IVA in the Prevention of Corruption Act for the attachment and forfeiture of property of corrupt public servants on the lines of the Criminal Law (Amendment) Ordinance, 1944, was introduced in the Lok Sabha on 19th December, 2008 and was passed by the Lok Sabha on 23rd December, 2008. However, the said Bill lapsed due to dissolution of the Fourteenth Lok Sabha. It is proposed to insert similar provisions on the lines of the 2008 Bill in the Prevention of Corruption Act;

(i) the Prevention of Corruption (Amendment) Bill, 2008 had proposed an amendment to section 19 of the Act on the lines of section 197 of the Code of Criminal Procedure, 1973 for extending protection of prior sanction of the Government or competent authority after retirement or demittance of office by a public servant so as to provide a safeguard to a public servant from vexatious prosecution for any *bona fide* omission or commission in the discharge of his official duties. The said Bill having lapsed, this protection is, at present, not available for a person who has ceased to be a public servant. Section 19 is, therefore, proposed to be amended to provide the said protection to the persons who ceased to be public servants on the lines of the said Bill. Further, in the light of a recent judgment of the Supreme Court, the question of amending section 19 of the Act to lay down clear criteria and procedure for sanction of prosecution, including the stage at which sanction can be sought, timelines within which order has to be passed, was also examined by the Central Government and it is proposed to incorporate appropriate provisions in section 19 of the Act;

(j) section 6A of the Delhi Special Police Establishment Act, 1946 contains a protection of prior approval of the Central Government in respect of officers working at policy making levels in the Central Government before any inquiry or investigation is conducted against them by the Delhi Special Police Establishment. The basic principle behind the protection under section 19 of the Prevention of Corruption Act, 1988 and section 6A of the Delhi Special Police Establishment Act, 1946, being the same, namely, protection of honest civil servants from harassment by way of investigation or prosecution for things done in *bona fide* performance of public duty, it is felt that the protection under both these provisions should be available to public servants even after they cease to be public servants or after they cease to hold sensitive policy level positions, as the case may be. Accordingly, it is proposed to amend section 6A of the Delhi Special Police Establishment Act, 1946 for extending the protection of prior approval of the Central Government before conducting any inquiry or investigation in respect of offences under the Prevention of Corruption Act, 1988, to civil servants holding such senior policy level positions even after they cease to hold such positions due to reversion or retirement or other reasons.

3. The Bill seeks to achieve the above objectives.

V. NARAYANASAMY

III

BILL NO. LIV OF 2013

A Bill to provide for mental health care and services for persons with mental illness and to protect, promote and fulfil the rights of such persons during delivery of mental health care and services and for matters connected therewith or incidental thereto.

WHEREAS the Convention on Rights of Persons with Disabilities and its Optional Protocol was adopted on the 13th December, 2006 at United Nations Headquarters in New York and came into force on the 3rd May, 2008;

AND WHEREAS India has signed and ratified the said Convention on the 1st day of October, 2007;

AND WHEREAS it is necessary to align and harmonise the existing laws with the said Convention.

BE it enacted by Parliament in the Sixty-fourth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Mental Health Care Act, 2013.
- (2) It shall extend to the whole of India.

Short title,
extent and
commence-
ment.

(3) The provisions of this Act, except the provisions of sections 33, 45 and 73, shall come into force within a period of three months from the date on which it receives the assent of the President.

(4) The provisions of sections 33, 45 and 73 shall come into force within a period of nine months from the date on which it receives the assent of the President.

Definitions.

2. (1) In this Act, unless the context otherwise requires,—

(a) “advance directive” means an advance directive made by a person under section 5;

(b) “appropriate Government” means,—

(i) in relation to a mental health establishment established, owned or controlled by the Central Government or the Administrator of a Union territory having no legislature, the Central Government;

(ii) in relation to a mental health establishment, other than an establishment referred to in sub-clause (i), established, owned or controlled within the territory of—

(A) a State, the State Government;

(B) a Union territory having legislature, the Government of that Union territory;

(c) “Board” means the Mental Health Review Board constituted by the Commission under sub-section (1) of section 80;

(d) “care-giver” means a person who resides with a person with mental illness and is responsible for providing care to that person and includes a relative or any other person who performs this function, either free or with remuneration;

(e) “Central Authority” means the Central Mental Health Authority constituted under section 33;

(f) “clinical psychologist” means a person—

(i) having a recognised qualification in Clinical Psychology from an institution approved and recognised, by the Rehabilitation Council of India, constituted under section 3 of the Rehabilitation Council of India Act, 1992; or

34 of 1992.

(ii) having a Post Graduate degree in Psychology or Applied Psychology and a Master of Philosophy in Clinical Psychology or medical and social psychology or Masters of Philosophy in mental health and social psychology obtained after completion of a full time course of two years which includes supervised clinical training or doctorate in clinical psychology which includes supervised clinical training,

from any university recognised by the University Grants Commission established under the University Grants Commission Act, 1956;

3 of 1956.

(g) “Commission” means the Mental Health Review Commission constituted under sub-section (1) of section 73;

(h) “family” means a group of persons related by blood, adoption or marriage;

(i) “informed consent” means consent given for a specific intervention, without any force, undue influence, fraud, threat, mistake or misrepresentation, and obtained after disclosing to a person adequate information including risks and benefits of, and alternatives to, the specific intervention in a language and manner understood by the person;

(j) “least restrictive alternative” or “least restrictive environment” or “less restrictive option” means offering an option for treatment or a setting for treatment which—

(i) meets the person’s treatment needs; and

(ii) imposes the least restriction on the person’s rights;

(k) “local authority” means a Municipal Corporation or Municipal Council, or Zilla Parishad, or Nagar Panchayat, or Panchayat, by whatever name called, and includes such other authority or body having administrative control over the mental health establishment or empowered under any law for the time being in force, to function as a local authority in any city or town or village;

(l) “Magistrate” means—

2 of 1974. (i) in relation to a metropolitan area within the meaning of clause (k) of section 2 of the Code of Criminal Procedure, 1973, a Metropolitan Magistrate;

(ii) in relation to any other area, the Chief Judicial Magistrate, Sub-divisional Judicial Magistrate or such other Judicial Magistrate of the first class as the State Government may, by notification, empower to perform the functions of a Magistrate under this Act;

(m) “medical officer in charge” in relation to any mental health establishment means the psychiatrist or medical practitioner who, for the time being, is in charge of that mental health establishment;

(n) “medical practitioner” means a person who possesses a recognised medical qualification—

102 of 1956. (i) as defined in clause (h) of section 2 of the Indian Medical Council Act, 1956, and whose name has been entered in the State Medical Register, as defined in clause (k) of that section; or

48 of 1970. (ii) as defined in clause (h) of sub-section (I) of section 2 of the Indian Medicine Central Council Act, 1970, and whose name has been entered in a State Register of Indian Medicine, as defined in clause (j) of sub-section (I) of that section; or

59 of 1973. (iii) as defined in clause (g) of sub-section (I) of section 2 of the Homeopathy Central Council Act, 1973, and whose name has been entered in a State Register of Homeopathy, as defined in clause (i) of sub-section (I) of that section;

(o) “mental health establishment” means any health establishment, including Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homeopathy establishment, by whatever name called, either wholly or partly, meant for the care of persons with mental illness, established, owned, controlled or maintained by the appropriate Government, local authority, trust, whether private or public, corporation, co-operative society, organisation or any other entity or person, where persons with mental illness are admitted and reside at, or kept in, for care, treatment, convalescence and rehabilitation, either temporarily or otherwise; and includes any general hospital or general nursing home established or maintained by the appropriate Government, local authority, trust, whether private or public, corporation, co-operative society, organisation or any other entity or person; but does not include a family residential place where a person with mental illness resides with his relatives or friends;

(p) “mental health nurse” means a person with a diploma or degree in general nursing or diploma or degree in psychiatric nursing recognised by the Nursing Council of India established under the Nursing Council of India Act, 1947 and registered as such with the relevant nursing council in the State; 38 of 1947.

(q) “mental health professional” means—

(i) a psychiatrist as defined in clause (x); or

(ii) a professional registered with the concerned State Authority under section 55; or

(iii) a professional with Doctorate of Medicine (Ayurveda) in ‘Mano Vigyan Avum Manas Roga’ or Doctorate of Medicine (Homeopathy) in psychiatry;

(r) “mental illness” means a substantial disorder of thinking, mood, perception, orientation or memory that grossly impairs judgment, behaviour, capacity to recognise reality or ability to meet the ordinary demands of life, mental conditions associated with the abuse of alcohol and drugs, but does not include mental retardation which is a condition of arrested or incomplete development of mind of a person, specially characterised by subnormality of intelligence;

(s) “minor” means a person who has not completed the age of eighteen years;

(t) “notification” means a notification published in the Official Gazette and the expression “notify” shall be construed accordingly;

(u) “prescribed” means prescribed by rules made under this Act;

(v) “prisoner with mental illness” means a person with mental illness who is an under-trial or convicted of an offence and detained in a jail or prison;

(w) “psychiatric social worker” means a person having post-graduate degree awarded after completion of course of study of minimum two years in mental health or psychiatric social work, or doctorate in mental health or psychiatric social work, from an university recognised by the University Grants Commission established under the University Grants Commission Act, 1956; 3 of 1956.

(x) “psychiatrist” means a medical practitioner possessing a post-graduate degree or diploma in psychiatry awarded by an university recognised by the University Grants Commission established under the University Grants Commission Act, 1956, or awarded or recognised by the National Board of Examinations and included in the First Schedule of Indian Medical Council Act, 1956, or recognised by the Medical Council of India, constituted under the Indian Medical Council Act, 1956, and includes, in relation to any State, any medical officer who having regard to his knowledge and experience in psychiatry, has been declared by the Government of that State to be a psychiatrist for the purposes of this Act; 3 of 1956. 102 of 1956.

(y) “regulations” means regulations made under this Act;

(z) “relative” means any person related to the person with mental illness by blood, marriage or adoption;

(za) “State Authority” means the State Mental Health Authority established under section 45.

(2) The words and expressions used and not defined in this Act but defined in the Indian Medical Council Act, 1956 or the Indian Medicine Central Council Act, 1970 and not inconsistent with this Act shall have the meanings respectively assigned to them in those Acts. 102 of 1956. 48 of 1970.

CHAPTER II

MENTAL ILLNESS AND CAPACITY TO MAKE MENTAL HEALTH CARE AND TREATMENT DECISIONS

Determination
of mental
illness.

3. (1) Mental illness shall be determined in accordance with such nationally or internationally accepted medical standards (including the latest edition of the International Classification of Disease of the World Health Organisation) as may be notified by the Central Government.

(2) No person or authority shall classify a person as a person with mental illness, except for purposes directly relating to the treatment of the mental illness or in other matters as covered under this Act or any other law for the time being in force.

(3) Mental illness of a person shall not be determined on the basis of,—

(a) political, economic or social status or membership of a cultural, racial or religious group, or for any other reason not directly relevant to mental health status of the person;

(b) non-conformity with moral, social, cultural, work or political values or religious beliefs prevailing in a person's community.

(4) Past treatment or hospitalisation in a mental health establishment though relevant, shall not by itself justify any present or future determination of the person's mental illness.

(5) The determination of a person's mental illness shall alone not imply or be taken to mean that the person is of unsound mind unless he has been declared as such by a competent court.

4. (1) Every person, including a person with mental illness shall be deemed to have capacity to make decisions regarding his mental health care or treatment, if such person has ability to,—

Capacity to make mental health care and treatment decisions.

(a) understand the information relevant to the mental health care or treatment decision;

(b) retain that information;

(c) use or weigh that information as part of the process of making the mental health care or treatment decision; and

(d) communicate his decision by any means (including talking, using sign language or any other means).

(2) The information referred to in sub-section (1) shall be given to a person using simple language, which such person understands or in sign language or visual aids or any other means to enable him to understand the information.

(3) Where a person makes a decision regarding his mental health care or treatment which is perceived by others as inappropriate or wrong, that by itself, shall not mean that the person does not have the capacity to make mental health care or treatment decision, so long as the person has the capacity to make mental health care or treatment decision under sub-section (1).

Explanation.—For the purpose of this section, the expression “information relevant to the mental health care or treatment decision” means information about the consequences of making the decision and information about the consequences of not making the decision.

CHAPTER III

ADVANCE DIRECTIVE

5. (1) Every person, who is not a minor, shall have a right to make an advance directive in writing, specifying any or all of the following, namely:—

Advance directive.

(a) the way the person wishes to be cared for and treated for a mental illness;

(b) the way the person wishes not to be cared for and treated for a mental illness;

(c) the individual or individuals, in order of precedence, he wants to appoint as his nominated representative as provided under section 14.

(2) An advance directive under sub-section (1) may be made by a person irrespective of his past mental illness or treatment for the same.

(3) An advance directive made under sub-section (1), shall be invoked only when such person ceases to have capacity to make mental health care or treatment decisions and shall remain effective until such person regains capacity to make mental health care or treatment decisions.

(4) Any decision made by a person while he has the capacity to make mental health care and treatment decisions shall over-ride any previously written advance directive by such person.

(5) Any advance directive made contrary to any law for the time being in force shall be *ab initio* void.

Manner of making advance directive.

6. (1) An advance directive shall be made in writing on a plain paper with the person's signature or thumb impression on it and attested by two witnesses and be,—

(a) registered with the Board in the district where the person is ordinarily resident;

or

(b) signed by a medical practitioner certifying that the person has capacity to make mental health care and treatment decisions at the time of making the advance directive and that the person has made the advance directive of his own free will:

Provided that where the advance directive,—

(a) has been made in accordance with the procedure laid down in this sub-section; and

(b) contains a refusal for all future medical treatment for mental illness,

such advance directive shall be valid only after it has been submitted to the relevant Board and the Board following a hearing, has certified the validity of the advance directive:

Provided further that in case a person has written an advance directive which has not been registered with the Board or signed by a medical practitioner as referred to in the first proviso, the Board may decide the validity of such advance directive as and when required to do so.

(2) No fee shall be charged for registering the advance directive with the concerned Board or signing by a medical practitioner as required under sub-section (1).

Maintenance of online register.

7. Subject to the provisions contained in clause (a) of sub-section (1) of section 91, every Board shall maintain an online register of all advance directives registered with it and make them available to the concerned mental health professionals as and when required.

Revocation, amendment or cancellation of advance directive.

8. (1) An advance directive made under sub-section (1) of section 6 may be revoked, amended or cancelled by the person who made it at any time.

(2) The procedure for revoking, amending or cancelling an advance directive shall be the same as for making an advance directive under sub-section (1) of section 6.

Advance directive not to apply to emergency treatment.

9. The advance directive shall not apply to the emergency treatment given under section 103 to a person who made the advance directive.

10. It shall be the duty of every medical officer in charge of a mental health establishment and the psychiatrist in charge of a person's treatment to propose or give treatment to a person with mental illness, in accordance with his valid advance directive, subject to section 11.

Duty to follow advance directive.

11. (1) Where a mental health professional or a relative or a care-giver of a person desires not to follow an advance directive while treating a person with mental illness, such mental health professional or the relative or the care-giver of the person may make an application to the concerned Board to review, alter, modify or cancel the advance directive.

Power to review, alter, modify or cancel advance directive.

(2) Upon receipt of the application under sub-section (1), the Board may, after giving an opportunity of hearing to all concerned parties (including the person whose advance directive is in question), either uphold, modify, alter or cancel the advance directive after taking into consideration the following, namely:—

(a) whether the advance directive was made by the person out of his own free will and free from force, undue influence or coercion; or

(b) whether the person intended the advance directive to apply to the present circumstances, which may be different from those anticipated; or

(c) whether the person was sufficiently well informed to make the decision; or

(d) whether the person had capacity to make decisions relating to his mental health care or treatment when such advanced directive was made; or

(e) whether the content of the advance directive is contrary to other laws or constitutional provisions.

(3) The person writing the advance directive and his nominated representative shall have a duty to ensure that the medical officer in charge of a mental health establishment or a medical practitioner or a mental health professional, as the case may be, has access to the advance directive when required.

(4) The legal guardian shall have right to make an advance directive in writing in respect of a minor and all the provisions relating to advance directive, *mutatis mutandis*, shall apply to such minor till such time he attains majority.

12. (1) The Commission shall regularly and periodically review the use of advance directives and make recommendations in respect thereof.

Review of advance directives.

(2) The Commission in its review under sub-section (1) shall give specific consideration to the procedure for making an advance directive and also examine whether the existing procedure protects the rights of persons with mental illness.

(3) The Commission may modify the procedure for making an advance directive or make additional regulations regarding the procedure for advance directive to protect the rights of persons with mental illness.

13. (1) A medical practitioner or a mental health professional shall not be held liable for any unforeseen consequences on following a valid advance directive.

Liability of medical health professional in relation to advance directive.

(2) The medical practitioner or mental health professional shall not be held liable for not following a valid advance directive, if he has not been given a copy of the valid advance directive.

CHAPTER IV

NOMINATED REPRESENTATIVE

14. (1) Notwithstanding anything contained in clause (c) of sub-section (1) of section 5, every person who is not a minor, shall have a right to appoint a nominated representative.

Appointment and revocation of nominated representative.

(2) The nomination under sub-section (1) shall be made in writing on plain paper with the person's signature or thumb impression of the person referred to in that sub-section.

(3) The person appointed as the nominated representative shall not be a minor, be competent to discharge the duties or perform the functions assigned to him under this Act, and give his consent in writing to the mental health professional to discharge his duties and perform the functions assigned to him under this Act.

(4) Where no nominated representative is appointed by a person under sub-section (1), the following persons for the purposes of this Act in the order of precedence shall be deemed to be the nominated representative of a person with mental illness, namely:—

(a) the individual appointed as the nominated representative in the advance directive under clause (c) of sub-section (1) of section 5; or

(b) a relative, or if not available or not willing to be the nominated representative of such person; or

(c) a care-giver, or if not available or not willing to be the nominated representative of such person; or

(d) a suitable person appointed as such by the concerned Board; or

(e) if no such person is available to be appointed as a nominated representative, the Board shall appoint the Director, Department of Social Welfare, or his designated representative, as the nominated representative of the person with mental illness:

Provided that a person representing an organisation registered under the Societies Registration Act, 1860 or any other law for the time being in force, working for persons with mental illness, may temporarily be engaged by the mental health professional to discharge the duties of a nominated representative pending appointment of a nominated representative by the concerned Board.

21 of 1860.

(5) The representative of the organisation, referred to in the proviso to sub-section (4), may make a written application to the medical officer in charge of the mental health establishment or the psychiatrist in charge of the person's treatment, and such medical officer or psychiatrist, as the case may be, shall accept him as the temporary nominated representative, pending appointment of a nominated representative by the concerned Board.

(6) A person who has appointed any person as his nominated representative under this section may revoke or alter such appointment at any time in accordance with the procedure laid down for making an appointment of nominated representative under sub-section (1).

(7) The Board may, if it is of the opinion that it is in the interest of the person with mental illness to do so, revoke an appointment made by it under this section, and appoint a different representative under this section.

(8) The appointment of a nominated representative, or the inability of a person with mental illness to appoint a nominated representative, shall not be construed as the lack of capacity of the person to take decisions about his mental health care or treatment.

(9) All persons with mental illness shall have capacity to make mental health care or treatment decisions but may require varying levels of support from their nominated representative to make decisions.

Nominated
representative
of minor.

15. (1) Notwithstanding anything contained in section 14, in case of minors, the legal guardian shall be their nominated representative, unless the concerned Board orders otherwise under sub-section (2).

(2) Where on an application made to the concerned Board, by a mental health professional or any other person acting in the best interest of the minor, and on evidence presented before it, the concerned Board is of the opinion that,—

(a) the legal guardian is not acting in the best interests of the minor; or

(b) the legal guardian is otherwise not fit to act as the nominated representative of the minor,

it may appoint, any suitable individual who is willing to act as such, the nominated representative of the minor with mental illness:

Provided that in case no individual is available for appointment as a nominated representative, the Board shall appoint the Director in the Department of Social Welfare of the State in which such Board is located, or his nominee, as the nominated representative of the minor with mental illness.

16. The Board, on an application made to it by the person with mental illness, or by a relative of such person, or by the psychiatrist responsible for the care of such person, or by the medical officer in charge of the mental health establishment where the individual is admitted or proposed to be admitted, may revoke, alter or modify the order made under clause (e) of sub-section (4) of section 14 or under sub-section (2) of section 15.

Revocation, alteration, etc., of nominated representative by Board.

17. While fulfilling his duties under this Act, the nominated representative shall—

Duties of nominated representative.

(a) consider the current and past wishes, the life history, values, cultural background and the best interests of the person with mental illness;

(b) give particular credence to the views of the person with mental illness to the extent that the person understands the nature of the decisions under consideration;

(c) provide support to the person with mental illness in making treatment decisions under section 98 or section 99;

(d) have right to seek information on diagnosis and treatment to provide adequate support to the person with mental illness;

(e) have access to the family or home based rehabilitation services as provided under clause (c) of sub-section (4) of section 18 on behalf of and for the benefit of the person with mental illness;

(f) be involved in discharge planning under section 107;

(g) apply to the mental health establishment for admission under section 96 or section 98 or section 99;

(h) apply to the concerned Board on behalf of the person with mental illness for discharge under section 96 or section 98 or section 99;

(i) apply to the concerned Board against violation of rights of the person with mental illness in a mental health establishment;

(j) appoint a suitable attendant under sub-section (5) of section 96 or sub-section (6) of section 96;

(k) have the right to give or withhold consent for research under circumstances mentioned under sub-section (3) of section 108.

CHAPTER V

RIGHTS OF PERSONS WITH MENTAL ILLNESS

18. (1) Every person shall have a right to access mental health care and treatment from mental health services run or funded by the appropriate Government.

Right to access mental health care.

(2) The right to access mental health care and treatment shall mean mental health services of affordable cost, of good quality, available in sufficient quantity, accessible geographically, without discrimination on the basis of gender, sex, sexual orientation, religion, culture, caste, social or political beliefs, class, disability or any other basis and provided in a manner that is acceptable to persons with mental illness and their families and care-givers.

(3) The appropriate Government shall make sufficient provision as may be necessary, for a range of services required by persons with mental illness.

(4) Without prejudice to the generality of range of services under sub-section (3), such services shall include—

(a) provision of acute mental health care services such as outpatient and inpatient services;

(b) provision of half-way homes, sheltered accommodation, supported accommodation;

(c) provision for mental health services to support family of person with mental illness or home based rehabilitation;

(d) hospital and community based rehabilitation establishments and services;

(e) provision for child mental health services and old age mental health services.

(5) The appropriate Government shall,—

(a) integrate mental health services into general health care services at all levels of health care including primary, secondary and tertiary health care and in all health programmes run by the appropriate Government;

(b) provide treatment in a manner, which supports persons with mental illness to live in the community and with their families;

(c) ensure that the long term care in a mental health establishment for treatment of mental illness shall be used only in exceptional circumstances, for as short a duration as possible, and only as a last resort when appropriate community based treatment has been tried and shown to have failed;

(d) ensure that no person with mental illness (including children and older persons) shall be required to travel long distances to access mental health services and such services shall be available close to a place where a person with mental illness resides;

(e) ensure that as a minimum, mental health services run or funded by Government shall be available in each district;

(f) ensure, if minimum mental health services specified under sub-clause (e) of sub-section (4) are not available in the district where a person with mental illness resides, that the person with mental illness is entitled to access any other mental health service in the district and the costs of treatment at such establishments in that district will be borne by the appropriate Government:

Provided that till such time the services under this sub-section are made available in a health establishment run or funded by the appropriate Government, the appropriate Government shall make rules regarding reimbursement of costs of treatment at such mental health establishment.

(6) The appropriate Government shall make available a range of appropriate mental health services specified under sub-section (4) of section 18 at all general hospitals run or funded by such Government and basic and emergency mental health care services shall be available at all community health centres and upwards in the public health system run or funded by such Government.

(7) Persons with mental illness living below the poverty line whether or not in possession of a below poverty line card, or who are destitute or homeless shall be entitled to mental health treatment and services free of any charge and at no financial cost at all mental health establishments run or funded by the appropriate Government and at other mental health establishments designated by it.

(8) The appropriate Government shall ensure that the mental health services shall be of equal quality to other general health services and no discrimination be made in quality of services provided to persons with mental illness.

(9) The minimum quality standards of mental health services shall be as specified by regulations made by the State Authority.

(10) Without prejudice to the generality of range of services under sub-section (3) of section 18, the appropriate Government shall notify Essential Drug List and all medicines on the Essential Drug List shall be made available free of cost to all persons with mental illness at all times at health establishments run or funded by the appropriate Government starting from Community Health Centres and upwards in the public health system:

Provided that where the health professional of ayurveda, yoga, unani, siddha, homoeopathy or naturopathy systems recognised by the Central Government are available in any health establishment, the essential medicines from any similar list relating to the appropriate ayurveda, yoga, unani, siddha, homoeopathy or naturopathy systems shall also be made available free of cost to all persons with mental illness.

(11) The appropriate Government shall take measures to ensure that necessary budgetary provisions in terms of adequacy, priority, progress and equity are made for effective implementation of the provisions of this section.

(12) The Central Government shall lay an annual report before the Parliament and the State Governments shall lay an annual report before the State Legislature giving therein the details regarding the progress made towards achieving access to mental health care in the country.

Explanation.—For the purposes of sub-section (11), the expressions—

(i) “adequacy” means in terms of how much is enough to offset inflation;

(ii) “priority” means in terms of compared to other budget heads;

(iii) “equity” means in terms of fair allocation of resources taking into account the health, social and economic burden of mental illness on individuals, their families and care-givers;

(iv) “progress” means in terms of indicating an improvement in the State’s response.

19. (1) Every person with mental illness shall,—

(a) have a right to live in, be part of and not be segregated from society; and

(b) not continue to remain in a mental health establishment merely because he does not have a family or is not accepted by his family or is homeless or due to absence of community based facilities.

(2) The appropriate Government shall, within a reasonable period, provide for or support the establishment of less restrictive community based establishments including halfway homes, group homes and the like for persons who no longer require treatment in more restrictive mental health establishments such as long stay mental hospitals.

Right to community living.

Right to protection from cruel, inhuman and degrading treatment.

20. (1) Every person with mental illness shall have a right to live with dignity.

(2) Every person with mental illness shall be protected from cruel, inhuman or degrading treatment in any mental health establishment and shall have the following rights, namely:—

- (a) to live in safe and hygienic environment;
- (b) to have adequate sanitary conditions;
- (c) to have reasonable facilities for leisure, recreation, education and religious practices;
- (d) to privacy;
- (e) for proper clothing so as to protect such person from exposure of his body to maintain his dignity;
- (f) to not be forced to undertake work in a mental health establishment and to receive appropriate remuneration for work when undertaken;
- (g) to have adequate provision for preparing for living in the community;
- (h) to have adequate provision for wholesome food, sanitation, space and access to articles of personal hygiene, in particular, women's personal hygiene be adequately addressed by providing access to items that may be required during menstruation;
- (i) to not be subject to compulsory tonsuring (shaving of head hair);
- (j) to wear own personal clothes if so wished and to not be forced to wear uniforms provided by the establishment; and
- (k) to be protected from all forms of physical, verbal, emotional and sexual abuse.

Right to equality and non-discrimination.

21. (1) Every person with mental illness shall be treated as equal to persons with physical illness in the provision of all health care which shall include the following, namely:—

- (a) there shall be no discrimination on any basis including gender, sex, sexual orientation, religion, culture, caste, social or political beliefs, class or disability;
- (b) emergency facilities and emergency services for mental illness shall be of the same quality and availability as those provided to persons with physical illness;
- (c) persons with mental health services shall be entitled to the use of ambulance services in the same manner, extent and quality as provided to persons with physical illness;
- (d) living conditions in health establishments shall be of the same manner, extent and quality as provided to persons with physical illness; and
- (e) any other health services provided to persons with physical illness shall be provided in same manner, extent and quality to persons with mental illness.

(2) The Insurance Regulatory Development Authority established under the Insurance Regulatory Development Authority Act, 1999 shall endeavour to ensure that all insurers make provisions for medical insurance for treatment of mental illness on the same basis as is available for treatment of physical illness.

41 of 1999.

Right to information.

22. (1) A person with mental illness and his nominated representative shall have the rights to the following information, namely:—

- (a) the provision of this Act or any other law for the time being in force under which he has been admitted, if he is being admitted, and the criteria for admission under that provision;

(b) of his right to make an application to the concerned Board for a review of the admission;

(c) the nature of the person's mental illness and the proposed treatment plan which includes information about treatment proposed and the known side effects of the proposed treatment;

(d) receive the information in a language and form that such person receiving the information can understand.

(2) In case complete information cannot be given to the person with mental illness at the time of the admission or the start of treatment, it shall be the duty of the medical officer or psychiatrist in charge of the person's care to ensure that full information is provided promptly when the individual is in a position to receive it:

Provided that where the information has not been given to the person with mental illness at the time of the admission or the start of treatment, the medical officer or psychiatrist in charge of the person's care shall give the information to the nominated representative immediately.

23. (1) A person with mental illness shall have the right to confidentiality in respect of his mental health, mental health care, treatment and physical health care.

Right to confidentiality.

(2) All health professionals providing care or treatment to a person with mental illness shall have a duty to keep all such information confidential which has been obtained during care or treatment with the following exceptions, namely:—

(a) release of information to the nominated representative to enable him to fulfil his duties under this Act;

(b) release of information to other mental health professionals and other health professionals to enable them to provide care and treatment to the person with mental illness;

(c) release of information if it is necessary to protect any other person from harm or violence;

(d) only such information that is necessary to protect against the harm identified shall be released;

(e) release of information in the case of life threatening emergencies where such information is urgently needed to save lives;

(f) release of information upon an order by concerned Board or the Commission or High Court or Supreme Court or any other statutory authority competent to do so; and

(g) release of information in the interests of public safety and security.

24. (1) No photograph or any other information relating to a person with mental illness undergoing treatment at a mental health establishment shall be released to the media without the consent of the person with mental illness.

Restriction on release of information in respect of mental illness.

(2) The right to confidentiality of person with mental illness shall also apply to all information stored in electronic or digital format in real or virtual space.

25. (1) All persons with mental illness shall have right to access their medical records.

Right to access medical records.

(2) The psychiatrist in charge of such records may withhold specific information in the medical records if disclosure would result in,—

- (a) serious mental harm to the person with mental illness; or
- (b) likelihood of harm to other persons.

(3) When any information in the medical records is withheld from the person, the psychiatrist shall inform the person with mental illness of his or her right to apply to the concerned Board for an order to release such information.

Right to personal contacts and communication.

26. (1) A person with mental illness admitted to a mental health establishment shall have the right to refuse or receive visitors and to refuse or receive and make telephone or mobile phone calls at reasonable times of the day subject to the rules of such mental health establishment.

(2) A person with mental illness admitted in a mental health establishment may send and receive mail through electronic mode including through email.

(3) Where a person with mental illness informs the medical officer or psychiatrist in charge of the mental health establishment that he does not want to receive mail or email from any named person in the community, the medical officer or psychiatrist in charge may restrict such communication by the named person with the person with mental illness.

(4) Nothing contained in sub-sections (1) to (3) shall apply to visits from, telephone calls to, and from and mail or email to, and from individuals, specified under clauses (a) to (f) under any circumstances, namely:—

- (a) any Judge or officer authorised by a competent court; or
- (b) members of the concerned Board or the Central Authority or the State Authority;
- (c) any member of the Parliament or a Member of State Legislature;
- (d) nominated representative, lawyer or legal representative of the person;
- (e) medical practitioner in charge of the person's treatment;
- (f) any other person authorised by the appropriate Government.

Right to legal aid.

27. (1) A person with mental illness shall be entitled to receive free legal services to exercise any of his rights given under this Act.

(2) It shall be the duty of medical officer or psychiatrist in charge of a mental health establishment to inform the person with mental illness that he is entitled to free legal services under the Legal Services Authorities Act, 1987 or other relevant laws or under any order of the court if so ordered and provide the contact details of the availability of services.

39 of 1987.

Right to make complaints about deficiencies in provision of services.

28. (1) Any person with mental illness or his or her nominated representative, shall have the right to complain regarding deficiencies in provision of care, treatment and services in a mental health establishment to,—

- (a) the medical officer or psychiatrist in charge of the establishment and if not satisfied with the response;
- (b) the State Authority and if not satisfied with the response;
- (c) the concerned Board.

(2) The provisions for making complaint in sub-section (1), is without prejudice to the rights of the person to seek any judicial remedy for violation of his rights in a mental health establishment or by any mental health professional either under this Act or any other law for the time being in force.

CHAPTER VI

DUTIES OF APPROPRIATE GOVERNMENT

29. (1) The appropriate Government shall have a duty to plan, design and implement programmes for the promotion of mental health and prevention of mental illness in the country.

Promotion of mental health and preventive programmes.

(2) Without prejudice to the generality of the provisions contained in sub-section (1), the appropriate Government shall, in particular, plan, design and implement public health programmes to reduce suicides and attempted suicides in the country.

30. The appropriate Government shall take all measures to ensure that,—

(a) the provisions of this Act are given wide publicity through public media, including television, radio, print and online media at regular intervals;

(b) the programmes to reduce stigma associated with mental illness are planned, designed, funded and implemented in an effective manner;

(c) the appropriate Government officials including police officers and other officers of the appropriate Government are given periodic sensitisation and awareness training on the issues under this Act.

Creating awareness about mental health and illness and reducing stigma associated with mental illness.

31. (1) The appropriate Government shall take measures to address the human resource requirements of mental health services in the country by planning, developing and implementing educational and training programmes in collaboration with institutions of higher education and training, to increase the human resources available to deliver mental health interventions and to improve the skills of the available human resources to better address the needs of persons with mental illness.

Appropriate Government to take measures as regard to human resource development and training, etc.

(2) The appropriate Government shall, at the minimum, train all medical officers in public health care establishments and all medical officers in the prisons or jails to provide basic and emergency mental health care.

(3) The appropriate Government shall make efforts to meet internationally accepted guidelines for number of mental health professionals on the basis of population, within ten years from the commencement of this Act.

(4) The appropriate Government shall include in its annual report referred to in sub-section (12) of section 18 the information about progress made in improving the human resource under this section.

32. The appropriate Government shall take all measures to ensure effective co-ordination between services provided by concerned Ministries and Departments such as those dealing with health, law, home affairs, human resources, social justice, employment, education, women and child development, medical education to address issues of mental health care.

Co-ordination within appropriate Government.

CHAPTER VII

CENTRAL MENTAL HEALTH AUTHORITY

33. The Central Government shall, within a period of nine months from the date on which this Act receives the assent of the President, by notification, establish, for the purposes of this Act, an Authority to be known as the Central Mental Health Authority.

Establishment of Central Authority.

34. (1) The Central Authority shall consist of the following, namely:—

(a) Secretary or Additional Secretary to the Government of India in the Department of Health and Family Welfare— chairperson *ex officio*;

Composition of Central Authority.

(b) Joint Secretary to the Government of India in the Department of Health and Family Welfare, in charge of mental health— member *ex officio*;

(c) Joint Secretary to the Government of India in the Department of Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homeopathy— member *ex officio*;

(d) Director General of Health Services—member *ex officio*;

(e) Joint Secretary to the Government of India in the Department of Disability Affairs of the Ministry of Social Justice and Empowerment— member *ex officio*;

(f) Joint Secretary to the Government of India in the Ministry of Women and Child Development— member *ex officio*;

(g) Directors of the Central Institutions for Mental Health — members *ex officio*;

(h) one mental health professional as defined in item (iii) of clause (q) of sub-section (1) of section 2 having at least fifteen years experience in the field, to be nominated by the Central Government—member;

(i) one psychiatric social worker having at least fifteen years experience in the field, to be nominated by the Central Government—member;

(j) one clinical psychologist having at least fifteen years experience in the field, to be nominated by the Central Government—member;

(k) one mental health nurse having at least fifteen years experience in the field of mental health, to be nominated by the Central Government—member;

(l) two persons representing persons who have or have had mental illness, to be nominated by the Central Government—members;

(m) two persons representing care-givers of persons with mental illness or organisations representing care-givers, to be nominated by the Central Government—members;

(n) two persons representing non-governmental organisations which provide services to persons with mental illness, to be nominated by the Central Government—members.

(2) The members referred to in clauses (h) to (n) of sub-section (1), shall be nominated by the Central Government in such manner as may be prescribed.

Term of office, salaries and allowances of chairperson and members.

35. (1) The members of the Central Authority referred to in clauses (h) to (n) of sub-section (1) of section 34 shall hold office as such for a term of three years from the date of nomination and shall be eligible for re-appointment:

Provided that a member shall not hold office as such after he has attained the age of seventy years.

(2) The chairperson and other *ex officio* members of the Authority shall hold office as such chairperson or member, as the case may be, so long as he holds the office by virtue of which he is nominated.

(3) The salaries and allowances payable to, and the other terms and conditions of service of, the chairperson and other members shall be such as may be prescribed.

Resignation.

36. A member of the Central Authority may, by notice in writing under his hand addressed to the Central Government, resign his office:

Provided that a member shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon the office or until the expiry of his term of office, whichever is the earliest.

37. The Central Government shall, within two months from the date of occurrence of any vacancy by reason of death, resignation or removal of a member of the Authority and three months before the superannuation or completion of the term of office of any member of that Authority, make nomination for filling up of the vacancy.

Filling of vacancies.

38. No act or proceeding of the Central Authority shall be invalid merely by reason of—

(a) any vacancy in, or any defect in the constitution of, the Authority; or

(b) any defect in the appointment of a person as a member of the Authority; or

(c) any irregularity in the procedure of the Authority not affecting the merits of the case.

Vacancies, etc., not to invalidate proceedings of Central Authority.

39. Any member having any direct or indirect interest, whether pecuniary or otherwise, in any matter coming up for consideration at a meeting of the Central Authority, shall, as soon as possible after the relevant circumstances have come to his knowledge, disclose the nature of his interest at such meeting and such disclosure shall be recorded in the proceedings of the Central Authority, and the member shall not take any part in any deliberation or decision of the Authority with respect to that matter.

Member not to participate in meetings in certain cases.

40. (1) There shall be a chief executive officer of the Authority, not below the rank of the Director to the Government of India, to be appointed by the Central Government.

Officers and other employees of Central Authority.

(2) The Authority may, with the approval of the Central Government, determine the number, nature and categories of other officers and employees required by the Central Authority in the discharge of its functions.

(3) The salaries and allowances payable to, and the other terms and conditions of service (including the qualifications, experience and manner of appointment) of, the chief executive officer and other officers and employees of the Central Authority shall be such as may be specified by regulations with the approval of the Central Government.

41. (1) The chief executive officer shall be the legal representative of the Central Authority and shall be responsible for—

(a) the day-to-day administration of the Central Authority;

(b) implementing the work programmes and decisions adopted by the Central Authority;

(c) drawing up of proposal for the Central Authority's work programmes;

(d) the preparation of the statement of revenue and expenditure and the execution of the budget of the Central Authority.

Functions of chief executive officer of Central Authority.

(2) Every year, the chief executive officer shall submit to the Central Authority for approval—

(a) a general report covering all the activities of the Central Authority in the previous year;

(b) programmes of work;

(c) the annual accounts for the previous year; and

(d) the budget for the coming year.

(3) The chief executive officer shall have administrative control over the officers and other employees of the Central Authority.

Transfer of assets, liabilities of Central Authority.

42. On the establishment of the Central Authority—

(a) all the assets and liabilities of the Central Authority for Mental Health Services constituted under sub-section (1) of section 3 of the Mental Health Act, 1987 shall stand transferred to, and vested in, the Central Authority.

14 of 1987.

Explanation.— The assets of such Central Authority for Mental Health Services shall be deemed to include all rights and powers, and all properties, whether movable or immovable, including, in particular, cash balances, deposits and all other interests and rights in, or arising out of, such properties as may be in the possession of such Unique Identification Authority of India and all books of account and other documents relating to the same; and liabilities shall be deemed to include all debts, liabilities and obligations of whatever kind;

(b) without prejudice to the provisions of clause (a), all data and information collected during enrolment, all details of authentication performed, debts, obligations and liabilities incurred, all contracts entered into and all matters and things engaged to be done by, with or for such Central Authority for Mental Health Services immediately before that day, for or in connection with the purpose of the said Central Authority for Mental Health Services, shall be deemed to have been incurred, entered into or engaged to be done by, with or for, the Central Authority;

(c) all sums of money due to the Central Authority for Mental Health Services immediately before that day shall be deemed to be due to the Central Authority; and

(d) all suits and other legal proceedings instituted or which could have been instituted by or against such Central Authority for Mental Health Services immediately before that day may be continued or may be instituted by or against the Central Authority.

Functions of Central Authority.

43. (1) The Central Authority shall—

(a) register all mental health establishments under the control of the Central Government and maintain a register of all mental health establishments in the country based on information provided by all State Mental Health Authorities of registered establishments and compile update and publish (including online on the internet) a register of such establishments;

(b) develop quality and service provision norms for different types of mental health establishments under the Central Government;

(c) supervise all mental health establishments under the Central Government and receive complaints about deficiencies in provision of services;

(d) maintain a national register of clinical psychologists, mental health nurses and psychiatric social workers based on information provided by all State Authorities of persons registered to work as mental health professionals for the purpose of this Act and publish the list (including online on the internet) of such registered mental health professionals;

(e) train all persons including law enforcement officials, mental health professionals and other health professionals about the provisions and implementation of this Act;

(f) advise the Central Government on all matters relating to mental health care and services;

(g) discharge such other functions with respect to matters relating to mental health as the Central Government may decide:

Provided that the mental health establishments under the control of the Central Government, before the commencement of this Act, registered under the Mental Health Act, 1987 or any other law for the time being in force, shall be deemed to have been registered under the provisions of this Act and copy of such registration shall be furnished to the Central Authority.

14 of 1987.

(2) The procedure for registration (including the fees to be levied for such registration) of the mental health establishments under this section shall be such as may be prescribed by the Central Government.

44. (1) The Central Authority shall meet at such times (not less than twice in a year) and places and shall observe such rules of procedure in regard to the transaction of business at its meetings (including quorum at such meetings) as may be specified by regulations made by the Central Authority.

Meetings of
Central
Authority.

(2) If the chairperson, for any reason, is unable to attend a meeting of the Central Authority, the senior most member shall preside over the meeting of the Authority.

(3) All questions which come up before any meeting of the Authority shall be decided by a majority of votes by the members present and voting and in the event of an equality of votes, the chairperson or in his absence the member presiding over shall have a second or casting vote.

(4) All decisions of the Central Authority shall be authenticated by the signature of the chairperson or any other member authorised by the Central Authority in this behalf.

(5) If any member, who is a director of a company and who as such director, has any direct or indirect pecuniary interest in any manner coming up for consideration at a meeting of the Central Authority, he shall, as soon as possible after relevant circumstances have come to his knowledge, disclose the nature of his interest at such meeting and such disclosure shall be recorded in the proceedings of the Authority, and the member shall not take part in any deliberation or decision of the Authority with respect to that matter.

CHAPTER VIII

STATE MENTAL HEALTH AUTHORITY

45. Every State Government shall, within a period of nine months from the date on which this Act receives the assent of the President, by notification, establish, for the purposes of this Act, an Authority to be known as the State Mental Health Authority.

Establishment
of State
Authority.

46. (1) The State Authority shall consist of the following chairperson and members:—

Composition
of State
Authority.

(a) Secretary or Principal Secretary in the Department of Health of State Government— chairperson *ex officio*;

(b) Joint Secretary in the Department of Health of the State Government, in charge of mental health— member *ex officio*;

(c) Director of Health Services or Medical Education—member *ex officio*;

(d) Joint Secretary in the Department of Social Welfare of the State Government— member *ex officio*;

(e) Superintendent of any of the Mental Hospitals in the State or Head of Department of Psychiatry at any Government Medical College, to be nominated by the State Government— member;

(f) one eminent psychiatrist from the State not in Government service to be nominated by the State Government— member;

(g) one mental health professional as defined in item (iii) of clause (q) of sub-section (1) of section (2) having of least fifteen years experience in the field, to be nominated by the State Government—member;

(h) one psychiatric social worker having at least fifteen years experience in the field, to be nominated by the State Government—member;

(i) one clinical psychologist having at least fifteen years experience in the field, to be nominated by the State Government—member;

(j) one mental health nurse having at least fifteen years experience in the field of mental health, to be nominated by the State Government—member;

(k) two persons representing persons who have or have had mental illness, to be nominated by the State Government—member;

(l) two persons representing care-givers of persons with mental illness or organisations representing care-givers, to be nominated by the State Government—members;

(m) two persons representing non-governmental organisations which provide services to persons with mental illness, to be nominated by the State Government— members.

(2) The members referred to in clauses (e) to (m) of sub-section (1), shall be nominated by the State Government in such manner as may be prescribed.

47. (1) The members of the State Authority referred to in clauses (e) to (m) of sub-section (1) of section 46 shall hold office as such for a term of three years from the date of nomination and shall be eligible for reappointment:

Provided that a member shall not hold office as such after he has attained the age of seventy years.

(2) The chairperson and other *ex officio* members of the State Authority shall hold office as such chairperson or member, as the case may be, so long as he holds the office by virtue of which he is nominated.

(3) The salaries and allowances payable to, and the other terms and conditions of service of, the chairperson and other members shall be such as may be prescribed.

Term of office, salaries and allowances of chairperson and other members.

Resignation.

48. A member of the State Authority may, by notice in writing under his hand addressed to the State Government, resign his office:

Provided that a member shall, unless he is permitted by the State Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon office or until the expiry of his term of office, whichever is the earliest.

Filling of vacancies.

49. The State Government shall, within two months from the date of occurrence of any vacancy by reason of death, resignation or removal of a member of the Authority and three months before the superannuation or completion of the term of office of any member of that Authority, make nomination for filling up of the vacancy.

50. No act or proceeding of the State Authority shall be invalid merely by reason of—

- (a) any vacancy in, or any defect in the constitution of, the State Authority; or
- (b) any defect in the appointment of a person as a member of the State Authority; or
- (c) any irregularity in the procedure of the Authority not affecting the merits of the case.

Vacancies, etc., not to invalidate proceedings of State Authority.

51. Any member having any direct or indirect interest, whether pecuniary or otherwise, in any matter coming up for consideration at a meeting of the State Authority, shall, as soon as possible after the relevant circumstances have come to his knowledge, disclose the nature of his interest at such meeting and such disclosure shall be recorded in the proceedings of the State Authority, and the member shall not take any part in any deliberation or decision of the State Authority with respect to that matter.

Member not to participate in meetings in certain cases.

52. (1) There shall be a chief executive officer of the State Authority, not below the rank of the Director to the State Government, to be appointed by the State Government.

Officers and other employees of State Authority.

(2) The State Authority may, with the approval of the State Government, determine the number, nature and categories of other officers and employees required by the State Authority in the discharge of its functions.

(3) The salaries and allowances payable to, and the other terms and conditions of service (including the qualifications, experience and manner of appointment) of, the chief executive officer and other officers and employees of the State Authority shall be such as may be specified by regulations with the approval of the State Government.

53. (1) The chief executive officer shall be the legal representative of the State Authority and shall be responsible for—

Functions of chief executive officer of State Authority.

- (a) the day-to-day administration of the State Authority;
- (b) implementing the work programmes and decisions adopted by the State Authority;
- (c) drawing up of proposal for the State Authority's work programmes;
- (d) the preparation of the statement of revenue and expenditure and the execution of the budget of the State Authority.

(2) Every year, the chief executive officer shall submit to the State Authority for approval—

- (a) a general report covering all the activities of the Authority in the previous year;
- (b) programmes of work;
- (c) the annual accounts for the previous year; and
- (d) the budget for the coming year.

(3) The chief executive officer shall have administrative control over the officers and other employees of the State Authority.

54. On and from the establishment of the State Authority—

- (a) all the assets and liabilities of the State Authority for Mental Health Services constituted under sub-section (1) of section 4 of the Mental Health Act, 1987 shall stand transferred to, and vested in, the State Authority.

Transfer of assets, liabilities of State Authority.

Explanation.— The assets of such State Authority for Mental Health Services shall be deemed to include all rights and powers, and all properties, whether movable or immovable, including, in particular, cash balances, deposits and all other interests and rights in, or arising out of, such properties as may be in the possession of such State Authority for Mental Health Services and all books of account and other documents relating to the same; and liabilities shall be deemed to include all debts, liabilities and obligations of whatever kind;

(b) without prejudice to the provisions of clause (a), all data and information collected during enrolment, all details of authentication performed, debts, obligations and liabilities incurred, all contracts entered into and all matters and things engaged to be done by, with or for such State Authority for Mental Health Services immediately before that day, for or in connection with the purpose of the said State Authority for Mental Health Services, shall be deemed to have been incurred, entered into or engaged to be done by, with or for, the State Authority;

(c) all sums of money due to the State Authority for Mental Health Services immediately before that day shall be deemed to be due to the State Authority; and

(d) all suits and other legal proceedings instituted or which could have been instituted by or against such State Authority for Mental Health Services immediately before that day may be continued or may be instituted by or against the State Authority.

Functions of
State
Authority.

55. (1) The State Authority shall—

(a) register all mental health establishments in the State except those referred to in section 43 and maintain and publish (including online on the internet) a register of such establishments;

(b) develop quality and service provision norms for different types of mental health establishments in the State;

(c) supervise all mental health establishments in the State and receive complaints about deficiencies in provision of services;

(d) register clinical psychologists, mental health nurses and psychiatric social workers in the State to work as mental health professionals, and publish the list of such registered mental health professionals in such manner as may be specified by regulations by the State Authority;

(e) train all relevant persons including law enforcement officials, mental health professionals and other health professionals about the provisions and implementation of this Act;

(f) discharge such other functions with respect to matters relating to mental health as the State Government may decide:

Provided that the mental health establishments in the State (except those referred to in section 43), registered, before the commencement of this Act, under the Mental Health Act, 1987 or any other law for the time being in force, shall be deemed to have been registered under the provisions of this Act and copy of such registration shall be furnished to the State Authority.

14 of 1987.

(2) The procedure for registration (including the fees to be levied for such registration) of the mental health establishments under this section shall be such as may be prescribed by the State Government.

Meetings of
State Authority.

56. (1) The State Authority shall meet at such times (not less than four times in a year) and places and shall observe such rules of procedure in regard to the transaction of business at its meetings (including quorum at such meetings) as may be specified by regulations made by the State Authority.

(2) If the chairperson, for any reason, is unable to attend a meeting of the State Authority, the senior most member shall preside over the meetings of the Authority.

(3) All questions which come up before any meeting of the State Authority shall be decided by a majority of votes by the members present and voting and in the event of an equality of votes, the chairperson or in his absence the member presiding over shall have a second or casting vote.

(4) All decisions of the State Authority shall be authenticated by the signature of the chairperson or any other member authorised by the State Authority in this behalf.

(5) If any member, who is a director of a company and who as such director, has any direct or indirect pecuniary interest in any manner coming up for consideration at a meeting of the State Authority, he shall, as soon as possible after relevant circumstances have come to his knowledge, disclose the nature of his interest at such meeting and such disclosure shall be recorded in the proceedings of the Authority, and the member shall not take part in any deliberation or decision of the State Authority with respect to that matter.

CHAPTER IX

FINANCE, ACCOUNTS AND AUDIT

57. The Central Government may, after due appropriation made by Parliament by law in this behalf, make to the Central Authority grants of such sums of money as the Central Government may think fit for being utilised for the purposes of this Act.

Grants by Central Government to Central Authority.

58. (1) There shall be constituted a Fund to be called the Central Mental Health Authority Fund and there shall be credited thereto—

Central Mental Health Authority Fund.

(i) any grants and loans made to the Authority by the Central Government;

(ii) all fees and charges received by the Authority under this Act; and

(iii) all sums received by the Authority from such other sources as may be decided upon by the Central Government.

(2) The Fund referred to in sub-section (1) shall be applied for meeting the salary, allowances and other remuneration of the chairperson, other members, chief executive officer, other officers and employees of the Authority and the expenses of the Authority incurred in the discharge of its functions and for purposes of this Act.

59. (1) The Central Authority shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government, in consultation with the Comptroller and Auditor-General of India.

Accounts and audit of Central Authority.

(2) The accounts of the Authority shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Authority to the Comptroller and Auditor-General of India.

(3) The Comptroller and Auditor-General of India and any other person appointed by him in connection with the audit of the accounts of the Authority shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the office of the Authority.

(4) The accounts of the Authority as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon, shall be forwarded annually to the Central Government by the Authority and the Central Government shall cause the same to be laid before each House of Parliament.

Annual report of Central Authority.

60. The Central Authority shall prepare in every year, in such form and at such time as may be prescribed by the Central Government, an annual report giving a full account of its activities during the previous year, and copies thereof along with copies of its annual accounts and auditor's report shall be forwarded to the Central Government and the Central Government shall cause the same to be laid before both Houses of Parliament.

Grants by State Government.

61. The State Government may, after due appropriation made by State Legislature by law in this behalf, make to the State Authority grants of such sums of money as the State Government may think fit for being utilised for the purposes of this Act.

State Mental Health Authority Fund.

62. (1) There shall be constituted a Fund to be called the State Mental Health Authority Fund and there shall be credited thereto—

- (i) any grants and loans made to the State Authority by the State Government;
- (ii) all fees and charges received by the Authority under this Act; and
- (iii) all sums received by the State Authority from such other sources as may be decided upon by the State Government.

(2) The Fund referred to in sub-section (1) shall be applied for meeting the salary, allowances and other remuneration of the chairperson, other members, chief executive officer, other officers and employees of the State Authority and the expenses of the State Authority incurred in the discharge of its functions and for purposes of this Act.

Accounts and audit of State Authority.

63. (1) The State Authority shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the State Government, in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the State Authority shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the State Authority to the Comptroller and Auditor-General of India.

(3) The Comptroller and Auditor-General of India and any other person appointed by him in connection with the audit of the accounts of the State Authority shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the office of the State Authority.

(4) The accounts of the State Authority as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon, shall be forwarded annually to the Central Government by the Authority and the Central Government shall cause the same to be laid before each House of Parliament.

Annual report of State Authority.

64. The State Authority shall prepare in every year, in such form and at such time as may be prescribed by the State Government, an annual report giving a full account of its activities during the previous year, and copies thereof along with copies of its annual accounts and auditor's report shall be forwarded to the State Government and the Government shall cause the same to be laid before the State Legislature.

CHAPTER X

MENTAL HEALTH ESTABLISHMENTS

Registration of mental health establishment.

65. (1) No person or organisation shall establish or run a mental health establishment unless it has been registered with the Authority under the provisions of this Act.

Explanation.— For the purposes of this Chapter, the expression “Authority” means—

(a) in respect of the mental health establishments under the control of the Central Government, the Central Authority;

(b) in respect of the mental health establishments in the State [not being the health establishments referred to in clause (a)], the State Authority.

(2) Every person or organisation who proposes to establish or run a mental health establishment shall register the said establishment with the Authority under the provisions of this Act.

23 of 2010. *Explanation.*— In case a mental health establishment has been registered under the Clinical Establishments (Registration and Regulation) Act, 2010 or any other law for the time being in force in a State, such mental health establishment shall submit a copy of the said registration along with an application in such form as may be prescribed to the Authority with an undertaking that the mental health establishment fulfils the minimum standards, if any, specified by the Authority for the specific category of mental health establishment.

(3) The Authority shall, on receipt of application under sub-section (2), on being satisfied that such mental health establishment fulfils the standards specified by the Authority, issue a certificate of registration in such form as may be prescribed:

Provided that till the period the Authority specifies the minimum standards for different categories of mental health establishments, it shall issue a provisional certificate of registration to the mental health establishment:

Provided further that on specifying the minimum standards for different categories of mental health establishments, the mental health establishment referred to in the first proviso shall, within a period of six months from the date such standards are specified, submit to the Authority an undertaking stating therein that such establishment fulfils the specified minimum standards and on being satisfied that such establishment fulfils the minimum standards, the Authority shall issue a certificate of registration to such mental health establishment.

(4) Every mental health establishment shall, for the purpose of registration and continuation of registration, fulfil—

(a) the minimum standards of facilities and services as may be specified by regulations made by the Central Authority;

(b) the minimum qualifications for the personnel engaged in such establishment as may be specified by regulations made by the Central Authority;

(c) provisions for maintenance of records and reporting as may be specified by regulations made by the Central Authority; and

(d) any other conditions as may be specified by regulations made by the Central Authority.

(5) The Authority may—

(a) classify mental health establishments into such different categories, as may be specified by regulations made by the Central Authority;

(b) specify different standards for different categories of mental health establishments;

(c) while specifying the minimum standards for mental health establishments, have regard to local conditions.

(6) Notwithstanding anything in this section, the Authority shall, within a period of eighteen months from the commencement of this Act, by notification, specify the minimum standards for different categories of mental health establishments.

Procedure for registration, inspection and inquiry of mental health establishments.

66. (1) The mental health establishment shall, for the purpose of registration, submit an application, in such form, accompanied with such details and fees, as may be prescribed, to the Authority.

(2) The mental health establishment may submit the application in person or by post or online.

(3) Every mental health establishment, existing on the date of commencement of this Act, shall, within a period of six months from the date of constitution of the Authority, submit an application for its provisional registration to the Authority.

(4) The Authority shall, within a period of ten days from the date of receipt of such application, issue to the mental health establishment a certificate of provisional registration in such form and containing such particulars and information as may be prescribed.

(5) The Authority shall not be required to conduct any inquiry prior to issue of provisional registration.

(6) The Authority shall, within a period of forty-five days from the date of provisional registration, publish in print and in digital form online, all particulars of the mental health establishment.

(7) A provisional registration shall be valid for a period of twelve months from the date of its issue and be renewable.

(8) Where standards for particular categories of mental health establishments have been specified under this Act, the mental health establishments in that category shall, within a period of six months from date of notifying such standards, apply for that category and obtain permanent registration.

(9) The Authority shall publish the standards in print and online in digital format.

(10) Until standards for particular categories of mental health establishments are specified under this Act, every mental health establishment shall, within thirty days before the expiry of the validity of certificate of provisional registration, apply for a renewal of provisional registration

(11) If the application is made after the expiry of provisional registration, the Authority shall allow renewal of registration on payment of such fees, as may be prescribed.

(12) A mental health establishment shall make an application for permanent registration to the Authority in such form and accompanied with such fees as may be specified by regulations.

(13) The mental health establishment shall submit evidence that the establishment has complied with the specified minimum standards in such manner as may be specified by regulations by the Authority.

(14) As soon as the mental health establishment submits the required evidence of the mental health establishment having complied with the specified minimum standards, the Authority shall give public notice and display the same on its website for a period of thirty days, for filing objections, if any, in such manner as may be specified by regulations.

(15) The Authority shall, communicate the objections, if any, received within the period referred to in sub-section (14), to the mental health establishment for response within such period as the Authority may determine.

(16) The mental health establishment shall submit evidence of compliance with the standards with reference to the objections communicated to such establishment under sub-section (15), to the Authority within the specified period.

(17) The Authority shall on being satisfied that the mental health establishment fulfils the specified minimum standards for registration, grant permanent certificate of registration to such establishment.

(18) The Authority shall, within a period of thirty days after the expiry of the period specified under this section, pass an order, either—

(a) grant permanent certificate of registration; or

(b) reject the application after recording the reasons thereof:

Provided that in case the Authority rejects the application under clause (b), it shall grant such period not exceeding six months, to the mental health establishment for rectification of the deficiencies which have led to rejection of the application and such establishment may apply afresh for registration.

(19) Notwithstanding anything contained in this section, if the Authority has not communicated any objections received by it to the mental health establishment under sub-section (15), nor has passed an order under sub-section (18), it shall be deemed that the Authority has granted permanent certificate of registration to the applicant.

67. (1) The Authority shall cause to be conducted an audit of all registered mental health establishments by such person or persons (including representatives of the local community) as may be prescribed, every three years, so as to ensure that such mental health establishments comply with the requirements of minimum standards for registration as a mental health establishment.

Audit of mental health establishment.

(2) The Authority may charge the mental health establishment such fee as may be prescribed, for conducting the audit under this section.

(3) The Authority may issue a show cause notice to a mental health establishment as to why its registration under this Act not be cancelled, if the Authority is satisfied that—

(a) the mental health establishment has failed to maintain the minimum standards specified by the Authority; or

(b) the person or persons or entities entrusted with the management of the mental health establishment have been convicted of an offence under this Act; or

(c) the mental health establishment violates the rights of any person with mental illness.

(4) The Authority may, after giving a reasonable opportunity to the mental health establishment, if satisfied that the mental health establishment falls under clause (a) or clause (b) or clause (c) of sub-section (3), without prejudice to any other action which it may take against the mental health establishment, cancel its registration.

(5) Every order made under sub-section (4) shall take effect—

(a) where no appeal has been preferred against such order, immediately on the expiry of the period specified for preferring of appeal; and

(b) where the appeal has been preferred against such an order and the appeal has been dismissed, from the date of the order of dismissal.

(6) The Authority shall, on cancellation of the registration for reasons to be recorded in writing, restrain immediately the mental health establishment from carrying on its operations, if there is imminent danger to the health and safety of the persons admitted in the mental health establishment.

(7) The Authority may cancel the registration of a mental health establishment if so directed by the Mental Health Review Commission or a Board to do so.

Inspection and inquiry.

68. (1) The Authority may, *suo motu* or on a complaint received from any person with respect to non adherence of minimum standards specified by or under this Act or contravention of any provision thereof, order an inspection or inquiry of any mental health establishment, to be made by such person as may be prescribed.

(2) The mental health establishment shall be entitled to be represented at such inspection or inquiry.

(3) The Authority shall communicate to the mental health establishment the results of such inspection or inquiry and may after ascertaining the opinion of the mental health establishment, order the establishment to make necessary changes within such period as may be specified by it.

(4) The mental health establishment shall comply with the order of the Authority made under sub-section (3).

(5) If the mental health establishment fails to comply with the order of the Authority made under sub-section (3), the Authority may cancel the registration of the mental health establishment.

(6) The Authority or any person authorised by it may, if there is any reason to suspect that any person is operating a mental health establishment without registration, enter and search in such manner as may be prescribed, and the mental health establishment shall co-operate with such inspection or inquiry and be entitled to be represented at such inspection or inquiry.

Appeal to High Court against order of Authority.

69. Any mental health establishment aggrieved by an order of the Authority refusing to grant registration or renewal of registration or cancellation of registration, may, within a period of thirty days from such order, prefer an appeal to the High Court in the State:

Provided that the High Court may entertain an appeal after the expiry of the said period of thirty days, if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days.

Certificates, fees and register of mental health establishments.

70. (1) Every mental health establishment shall display the certificate of registration in a conspicuous place in the mental health establishment in such manner so as to be visible to everyone visiting the mental health establishment.

(2) In case the certificate is destroyed or lost or mutilated or damaged, the Authority may issue a duplicate certificate on the request of the mental health establishment and on the payment of such fees as may be prescribed.

(3) The certificate of registration shall be non-transferable and valid in case of change of ownership of the establishment.

(4) In the event of change of category of the mental health establishment, such establishment shall surrender the certificate of registration to the Authority and the mental health establishment shall apply afresh for grant of certificate of registration in that category.

Maintenance of register of mental health establishment in digital format.

71. The Authority shall maintain in digital format a register of mental health establishments, registered by the Authority, to be called the Register of Mental Health Establishments and shall enter the particulars of the certificate of registration so granted in a separate register to be maintained in such form and manner as may be prescribed.

Duty of mental health establishment to display information.

72. (1) Every mental health establishment shall display within the establishment at conspicuous place (including on its website), the contact details including address and telephone numbers of the concerned Board.

(2) Every mental health establishment shall provide the person with necessary forms to apply to the concerned Board and also give free access to make telephone calls to the Board to apply for a review of the admission.

CHAPTER XI

MENTAL HEALTH REVIEW COMMISSION

73. (1) The Central Government shall, within nine months from the date on which this Act receives the assent of the President, constitute the Mental Health Review Commission to exercise the powers conferred upon and to perform the functions assigned to it under this Act.

Constitution of Mental Health Review Commission.

(2) The head office of the Commission shall be at Mumbai.

74. (1) The Commission shall consist of a president and four members.

Composition of Commission.

(2) The president and members of the Commission shall be appointed by the President of India on recommendation of the Selection Committee referred to in sub-section (1) of section 76:

Provided that in case a serving Chief Justice of a High Court or a Judge of the High Court with five years experience is appointed as the president of the Commission, he shall be appointed in consultation with the Chief Justice of India.

75. (1) A person shall be qualified to be appointed as the president of the Commission, if he is a serving or retired Chief Justice of a High Court or a Judge of the High Court with five years experience.

Qualifications for appointment of president and members of Commission.

(2) A person shall be qualified to be appointed as a member, if such person has ability, integrity and standing, and adequate knowledge and experience in mental health.

(3) Out of the four members referred to in section 74, one each shall be chosen from amongst—

(a) psychiatrists having at least fifteen years experience in the field;

(b) persons with mental illness or representatives of persons with mental illness;

(c) representatives of families and care-givers to person with mental illness or of non-Governmental organisations working in the field of mental health;

(d) persons having at least fifteen years of experience in public administration.

76. (1) The Central Government shall, for the purpose of selection of the president and members of the Commission, constitute a Selection Committee consisting of—

Selection Committee.

(a) Chief Justice of India —chairperson;

(b) Secretary of the Department of Health and Family Welfare in the Ministry of Health and Family Welfare as the convener—member;

(c) Secretary of the Department of Disability Affairs in the Ministry of Social Justice and Empowerment—member;

(d) Secretary of the Ministry of Women and Child Development—member;

(e) Secretary, Department of Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homeopathy in the Ministry of Health and Family Welfare—member;

(f) an eminent person working in the field of mental health—member.

(2) The Central Government shall, within two months from the date of occurrence of any vacancy by reason of death, resignation or removal of the president or a member of the Commission and three months before the superannuation or completion of the term of office of the president or any member of that Commission, make a reference to the Selection Committee for filling up of the vacancy.

(3) The Selection Committee shall finalise the selection of the president and members of the Commission within two months from the date on which the reference is made to it.

(4) The Selection Committee shall issue a public advertisement seeking applications from persons for recommendation of names in respect of categories mentioned under clauses (a), (b), (c) and (d) of sub-section (3) of section 75.

(5) The Selection Committee shall recommend a panel of two names for every vacancy referred to it.

(6) Before recommending any person for appointment as a president or other member of the Commission, the Selection Committee shall satisfy itself that such person does not have any financial or other interest, which is likely to affect prejudicially his functions as a member.

(7) Subject to the provisions of sub-sections (1) to (6), the Selection Committee shall regulate its own procedure.

(8) No appointment of the president or other member of the Commission shall be invalid merely by reason of any vacancy in the Selection Committee.

Term of office, salaries and allowances of President and other members.

77. (1) The president of the Commission shall be appointed on whole time basis and the members of the Commission shall be appointed on the whole time or part-time basis as the Central Government may decide.

(2) The president and the other members of the Commission shall hold office as such for a term of five years from the date on which he enters upon his office and shall not be eligible for reappointment:

Provided that the president or the member shall not hold office as such after he has attained the age of seventy years.

(3) The salaries and allowances payable to, and the other terms and conditions of service of, the president and other members shall be such as may be prescribed by the Central Government:

Provided that neither the salary and allowances nor the other terms and conditions of service of the president and other members of the Commission shall be varied to their disadvantage after their appointment.

Vacancies, etc., not to invalidate proceedings of Commission.

78. No act or proceeding of the Commission shall be invalid merely by reason of—

(a) any vacancy in, or any defect in the constitution of, the Commission; or

(b) any defect in the appointment of a person acting as a member of the Commission; or

(c) any irregularity in the procedure of the Commission not affecting the merits of the case.

Staff of Commission.

79. (1) The Central Government shall determine the nature and categories of the officers and other employees required to assist the Commission in the discharge of its functions and provide the Commission with such officers and other employees as it may think fit.

(2) The officers and other employees of the Commission shall discharge their functions under the general superintendence of the president.

(3) The salaries and allowances payable to, and the other terms and conditions of service of, the officers and other employees of the Commission shall be such as may be prescribed by the Central Government.

Constitution of Mental Health Review Boards.

80. (1) The Commission shall, with the prior concurrence of the concerned State Government, constitute Boards to be called as Mental Health Review Board in the districts of that State.

(2) The number, location and jurisdiction of the Boards shall be decided by the Commission in consultation with the concerned State Government.

(3) While constituting the Boards under sub-section (1), the Commission shall have regard to the followings, namely:—

- (a) the expected or actual workload of the Board in the State in which such Board is to be constituted;
- (b) number of mental health establishments existing in the State;
- (c) the number of persons with mental illness;
- (d) population in the district in which the Board is to be constituted;
- (e) geographical and climatic conditions of the district in which the Board is to be constituted.

81. Each Board shall consist of—

Composition
of Board.

(a) a District Judge, or an officer of the State judicial services who is qualified to be appointed as District Judge or a retired District Judge who shall be chairperson of the Board;

(b) representative of the District Collector or District Magistrate or Deputy Commissioner of the districts in which the Board is to be constituted;

(c) two members who shall be mental health professionals of whom at least one shall be a psychiatrist;

(d) two members who shall be persons with mental illness or care-givers or persons representing organisations of persons with mental illness or care-givers or non-governmental organisations working in the field of mental health.

82. (1) A person shall be disqualified to be appointed as the president or a member of the Commission or be removed by the President of India on the recommendation of the Central Government, if he—

Disqualification
and removal.

(a) has been convicted and sentenced to imprisonment for an offence which involves moral turpitude; or

(b) has been removed or dismissed from the service of the Government or a body corporate owned or controlled by the Government; or

(c) is adjudged as an insolvent; or

(d) has such financial or other interest as is likely to prejudice the discharge by him or her functions as a member; or

(e) has such other disqualifications as may be prescribed by the Central Government.

(2) A person shall be disqualified to be appointed as the chairperson or a member of a Board or be removed by the Commission, if he—

(a) has been convicted and sentenced to imprisonment for an offence which involves moral turpitude; or

(b) is adjudged as an insolvent; or

(c) has been removed or dismissed from the service of the Government or a body corporate owned or controlled by the Government; or

(d) has such financial or other interest as is likely to prejudice the discharge by him or her functions as a member; or

(e) has such other disqualifications as may be prescribed by the Central Government.

(3) The president or a member of the Commission may resign from the office by notice in writing under his hand addressed to the President of India and on such resignation being accepted, the vacancy shall be filled by appointment of a person, belonging to the category under sub-section (3) of section 75.

(4) A chairperson or member of a Board may resign his office by notice in writing under his hand addressed to the President of the Commission and on such resignation being accepted, the vacancy shall be filled by appointment of a person, belonging to the category under sub-section (1) of section 81.

Terms and conditions of service of chairperson and members of Board.

83. (1) The chairperson and members of the Board shall hold office for a term of five years or up to the age of seventy years, whichever is earlier and shall be eligible for re-appointment for another term of five years or up to the age of seventy years whichever is earlier.

(2) The appointment of chairperson and members of every Board shall be made by the president of the Commission.

(3) The honorarium and other allowances payable to, and the other terms and conditions of service of, the chairperson and members of the Board shall be such as may be prescribed by the Central Government.

Decisions of Commission and Board.

84. (1) The decisions of the Commission or the Board, as the case may be, shall be by consensus, failing which by a majority of votes of members present and voting and in the event of equality of votes, the president or the chairperson, as the case may be, shall have a second or casting vote.

(2) The quorum of a meeting of the Commission or the Board, as the case may be, shall be three members.

Applications to Board.

85. (1) Any person with mental illness or his nominated representative or a representative of a registered non-governmental organisation, with the consent of such a person, being aggrieved by the decision of any of the mental health establishment or whose rights under this Act have been violated, may make an application to the Board seeking redressal or appropriate relief.

(2) There shall be no fee or charge levied for making such an application.

(3) Every application referred to in sub-section (1) shall contain the name of applicant, his contact details, the details of the violation of his rights, the mental health establishment or any other place where such violation took place and the redressal sought from the Board.

(4) In exceptional circumstances, the Board may accept an application made orally or over telephone from a person admitted to a mental health establishment.

Proceedings before Commission and Board to be judicial proceedings.

86. All proceedings before the Commission and the Board, shall be deemed to be judicial proceedings within the meaning of sections 193, 219 and 228 of the Indian Penal Code.

Meetings.

87. The Commission and the Board shall meet at such times and places and shall observe such rules of procedure in regard to the transaction of business at its meetings as may be specified by regulations made by the Commission.

Proceedings before Board.

88. (1) The Board, on receipt of an application under sub-section (1) of section 85, shall, subject to the provisions of this section, endeavour to hear and dispose of the same

within a period of ninety days.

(2) The Board shall dispose of an application—

(a) for appointment of nominated representative under clause (d) of sub-section (4) of section 14;

(b) challenging admission of a minor under section 96;

(c) challenging supported admission under sub-section (10) or sub-section (11) of section 98,

within a period of seven days from the date of receipt of such applications.

(3) The Board shall dispose of an application challenging supported admission under section 99 within a period of twenty-one days from date of receipt of the application.

(4) The Board shall dispose of an application, other than an application referred to in sub-section (3), within a period of ninety days from the date of filing of the application.

(5) The proceeding of the Board shall be held *in camera*.

(6) The Board shall not ordinarily grant an adjournment for the hearing.

(7) The parties to an application may appear in person or be represented by a counsel or a representative of their choice.

(8) In respect of any application concerning a person with mental illness, the Board shall hold the hearings and conduct the proceedings at the mental health establishment where such person is admitted.

(9) The Board may allow any persons other than those directly interested with the application, with the permission of the person with mental illness and the chairperson of the Board, to attend the hearing.

(10) The person with mental illness whose matter is being heard shall have the right to give oral evidence to the Board, if such person desires to do so.

(11) The Board shall have the power to require the attendance and testimony of such other witnesses as it deems appropriate.

(12) The parties to a matter shall have the right to inspect any document relied upon by any other party in its submissions to the Board and may obtain copies of the same.

(13) The Board shall, within five days of the completion of the hearing, communicate its decision to the parties in writing.

(14) Any member who is directly or indirectly involved in a particular case, shall not sit on the Board during the hearings with respect to that case.

89. Subject to the provisions of this Act, the powers and functions of the Commission shall, *inter alia*, include all or any of the following matters, namely:—

(a) appoint and remove members of the Board;

(b) give guidance to the Board on interpretation of the provisions of this Act and the procedures to be followed by the Board;

(c) review periodically the use of advance directives and make regulations with regard to the procedure for advance directive;

(d) advise the Central Government on matters relating to the promotion and protection of rights of persons with mental illness.

Powers and
functions of
Commission.

Commission to appoint Expert Committee to prepare guidance document.

90. (1) The Commission shall appoint an Expert Committee to prepare a guidance document for medical practitioners and mental health professionals, containing procedures for assessing, when necessary or the capacity of persons to make mental health care or treatment decisions.

(2) Every medical practitioner and mental health professional shall, while assessing capacity of a person to make mental health care or treatment decisions, comply with the guidance document referred to in sub-section (1) and follow the procedure specified therein.

Powers and functions of Board.

91. (1) Subject to the provisions of this Act, the powers and functions of the Board shall, include all or any of the following matters, namely:—

(a) to register, review, alter, modify or cancel an advance directive;

(b) to appoint a nominated representative;

(c) to receive and decide application from a person with mental illness or his nominated representative or any other interested person against the decision of medical officer or psychiatrists in charge of mental health establishment or mental health establishment under section 96 or section 98 or section 99;

(d) to receive and decide applications in respect non-disclosure of information specified under sub-section (3) of section 25;

(e) to adjudicate complaints regarding deficiencies in care and services specified under section 28;

(f) to visit and inspect prison or jails and seek clarifications from the medical officer in charge of health services in such prison or jail.

(2) Where it is brought to the notice of a Board or to the Commission, that a mental health establishment violates the rights of persons with mental illness, the Board or the Commission, as the case may be, shall direct the Central Authority or the State Authority to conduct an inspection and inquiry and submit a report of such inspection and inquiry to the Board or the Commission, as the case may be, containing the action taken or proposed to be taken by the Central Authority or the State Authority to protect the rights of persons with mental illness in the said mental health establishment.

(3) Notwithstanding anything contained in this Act, the Board, in consultation with the Commission, may take measures to protect the rights of persons with mental illness as it considers appropriate.

(4) If the mental health establishment does not comply with the orders or directions of the Commission or the Board or wilfully neglects such order or direction, the Commission or the Board, as the case may be, may impose monetary penalty which may extend up to five lakh rupees on such mental health establishment or order the Central Authority or the State Authority to cancel the registration of such mental health establishment.

Appeal to High Court against order of Commission or Board.

92. Any person or establishment aggrieved by the decision of the Commission or a Board may, within a period of thirty days from such decision, prefer an appeal to the High Court of the State in which the Board is situated:

Provided that the High Court may entertain an appeal after the expiry of the said period of thirty days, if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days.

Grants by Central Government to Commission.

93. (1) The Central Government may, after due appropriation made by Parliament by law in this behalf, make to the Commission grants of such sums of money as the Central Government may think fit for being utilised for the purposes of this Act.

(2) The grants referred to in sub-section (1) shall be applied for,—

(a) meeting the salary, allowances and other remuneration of the president, members, officers and other employees of the Commission;

(b) meeting the salary, allowances and other remuneration of the chairperson, members, officers and other employees of the Boards; and

(c) the expenses of the Commission and the Boards incurred in the discharge of their functions and for the purposes of this Act.

CHAPTER XII

ADMISSION, TREATMENT AND DISCHARGE

94. (1) For the purposes of this Act, “independent patient or an independent admission” refers to the admission of person with mental illness, to a mental health establishment, who has the capacity to make mental health care and treatment decisions or requires minimal support in making decisions.

Admission of person with mental illness as independent patient in mental health establishment.

(2) All admissions in the mental health establishment shall, as far as possible, be independent admissions except when such conditions exist as make supported admission unavoidable.

95. (1) Any person, who is not a minor and who considers himself to have a mental illness and desires to be admitted to any mental health establishment for treatment may request the medical officer or psychiatrist in charge of the establishment to be admitted as an independent patient.

Independent admission and treatment.

(2) On receipt of such request under sub-section (1), the medical officer or psychiatrist in charge of the establishment shall admit the person to the establishment if the medical officer or psychiatrist is satisfied that—

(a) the person has a mental illness of a severity requiring admission to a mental health establishment;

(b) the person with mental illness is likely to benefit from admission and treatment to the mental health establishment;

(c) the person has understood the nature and purpose of admission to the mental health establishment, and has made the request for admission of his own free will, without any duress or undue influence and has the capacity to make mental health care and treatment decisions without support or requires minimal support from others in making such decisions.

(3) If a person is unable to understand the purpose, nature, likely effects of proposed treatment and of the probable result of not accepting the treatment or requires a very high level of support approaching hundred per cent. support in making decisions, he or she shall be deemed unable to understand the purpose of the admission and therefore shall not be admitted as independent patient under this section.

(4) A person admitted as an independent patient to a mental health establishment shall be bound to abide by order and instructions or bye laws of the mental health establishment.

(5) An independent patient shall not be given treatment without his informed consent.

(6) The mental health establishment shall admit an independent patient on his own request, and shall not require the consent or presence of a nominated representative or a relative or care-giver for admitting the person to the mental health establishment.

(7) Subject to the provisions contained in section 97 an independent patient may get himself discharged from the mental health establishment without the consent of the medical officer or psychiatrist in charge of such establishment.

Admission of
minor.

96. (1) A minor may be admitted to a mental health establishment only after following the procedure laid down in this section.

(2) The nominated representative of the minor shall apply to the medical officer in charge of a mental health establishment for admission of the minor to the establishment.

(3) Upon receipt of such an application, the medical officer or psychiatrist in charge of the mental health establishment may admit such a minor to the establishment, if two psychiatrists, or one psychiatrist and one mental health professional or one psychiatrist and one medical practitioner, have independently examined the minor on the day of admission or in the preceding seven days and both independently conclude based on the examination and, if appropriate, on information provided by others, that,—

(a) the minor has a mental illness of a severity requiring admission to a mental health establishment;

(b) admission shall be in the best interests of the minor, with regard to his or her health, well-being or safety, taking into account the wishes of the minor if ascertainable and the reasons for reaching this decision;

(c) the mental health care needs of the minor cannot be fulfilled unless he is admitted; and

(d) all community based alternatives to admission have been shown to have failed or are demonstrably unsuitable for the needs of the minor.

(4) A minor so admitted shall be accommodated separately from adults, in an environment that takes into account his age and developmental needs and is at least of the same quality as is provided to other minors admitted to hospitals for other medical treatments.

(5) The nominated representative or an attendant appointed by the nominated representative shall under all circumstances stay with the minor in the mental health establishment for the entire duration of the admission of the minor to the mental health establishment.

(6) In the case of minor girls, where the nominated representative is male, a female attendant shall be appointed by the nominated representative and under all circumstances shall stay with the minor girl in the mental health establishment for the entire duration of her admission.

(7) A minor shall be given treatment with the informed consent of his nominated representative.

(8) If the nominated representative no longer supports admission of the minor under this section or requests discharge of the minor from the mental health establishment, the minor shall be discharged by the mental health establishment.

(9) Any admission of a minor to a mental health establishment shall be informed by the medical officer or psychiatrist in charge of the mental health establishment to the concerned Board within a period of seventy-two hours.

(10) The concerned Board shall have the right to visit and interview the minor or review the medical records if the Board desires to do so.

(11) Any admission of a minor which continues for a period of thirty days shall be immediately informed to the concerned Board.

(12) The concerned Board shall carry out a mandatory review within a period of seven days of being informed, of all admissions of minors continuing beyond thirty days and every subsequent thirty days.

(13) The concerned Board shall at minimum, review the clinical records of the minor and may interview the minor if necessary.

97. (1) The medical officer or psychiatrist in charge of a mental health establishment shall discharge from the mental health establishment any person admitted under section 95 as an independent patient immediately on request made by such person or if the person disagrees with his admission under section 95 subject to the provisions of sub-section (3).

Discharge of independent patients.

(2) Where a minor has been admitted to a mental health establishment under section 96 and attains the age of eighteen years during his stay in the mental health establishment, the medical officer in charge of the mental health establishment shall classify him as an independent patient under section 95 and all provisions of this Act as applicable to independent patient who is not minor, shall apply to such person.

(3) Notwithstanding anything contained in this Act, a mental health professional may prevent discharge of a person admitted as an independent person under section 95 for a period of twenty-four hours so as to allow his assessment necessary for admission under section 98 if the mental health professional is of the opinion that—

(a) such person is unable to understand the nature and purpose of his decisions and requires substantial or very high support from his or her nominated representative; or

(b) has recently threatened or attempted or is threatening or attempting to cause bodily harm to himself; or

(c) has recently behaved or is behaving violently towards another person or has caused or is causing another person to fear bodily harm from him; or

(d) has recently shown or is showing an inability to care for himself to a degree that places the individual at risk of harm to himself.

(4) The person referred to in sub-section (3) shall be either admitted as a supported patient under section 98, or discharged from the establishment within a period of twenty-four hours or on completion of assessments for admission for a supported patient under section 98, whichever is earlier.

98. (1) The medical officer or psychiatrist in charge of a mental health establishment shall admit every such person to the establishment, upon application by the nominated representative of the person, under this section, if—

Admission and treatment of persons with mental illness, with high support needs, in mental health establishment, up to thirty days (supported admission).

(a) the person has been independently examined on the day of admission or in the preceding seven days, by one psychiatrist and the other being a mental health professional or a medical practitioner, and both independently conclude based on the examination and, if appropriate, on information provided by others, that the person has a mental illness of such severity that the person,—

(i) has recently threatened or attempted or is threatening or attempting to cause bodily harm to himself; or

(ii) has recently behaved or is behaving violently towards another person or has caused or is causing another person to fear bodily harm from him; or

(iii) has recently shown or is showing an inability to care for himself to a degree that places the individual at risk of harm to himself;

(b) the psychiatrist or the mental health professionals or the medical practitioner, as the case may be, certify, after taking into account an advance directive, if any, that admission to the mental health establishment is the least restrictive care option possible in the circumstances; and

(c) the person is ineligible to receive care and treatment as an independent patient because the person is unable to make mental health care and treatment decisions independently and needs very high support from his nominated representative in making decisions.

(2) The admission of a person with mental illness to a mental health establishment under this section shall be limited to a period of thirty days.

(3) At the end of the period mentioned under sub-section (2), or earlier, if the person no longer meets the criteria for admission as stated in sub-section (1), the patient shall no longer remain in the establishment under this section.

(4) On the expiry of the period of thirty days referred to in sub-section (2), the person may continue to remain admitted in the mental health establishment in accordance with the provisions of section 99.

(5) If the conditions under section 99 are not met, the person may continue to remain in the mental health establishment as an independent patient under section 95 and the medical officer or psychiatrist in charge of the mental health establishment shall inform the person of his admission status under this Act, including his right to leave the mental health establishment.

(6) Every person with mental illness admitted under this section shall be provided treatment after taking into account,—

(a) an advance directive if any; or

(b) informed consent of the patient with the support of his nominated representative subject to the provisions of sub-section (7).

(7) If a person with the mental illness admitted under this section requires nearly hundred per cent. support from his nominated representative in making a decision in respect of his treatment, the nominated representative may temporarily consent to the treatment plan of such person on his behalf.

(8) In case where consent has been given under sub-section (7), the medical officer or psychiatrist in charge of the mental health establishment shall record such consent in the medical records and review the capacity of the patient to give consent every seven days.

(9) The medical officer or psychiatrist in charge of the mental health establishment shall report the concerned Board,—

(a) within three days the admissions of a woman or a minor;

(b) within seven days the admission of any person not being a woman or minor.

(10) A person admitted under this section or his nominated representative or a representative of a registered non-governmental organisation with the consent of the person, may apply to the concerned Board for review of the decision of the medical officer or psychiatrist in charge of the mental health establishment to admit the person to the mental health establishment under this section.

(11) The concerned Board shall review the decision of the medical officer or psychiatrist in charge of the mental health establishment and give its findings thereon within seven days of receipt of request for such review which shall be binding on all the concerned parties.

(12) Notwithstanding anything contained in this Act, it shall be the duty of the medical officer or psychiatrist in charge of the mental health establishment to keep the condition of the person with mental illness admitted under this section on going review.

(13) If the medical officer or psychiatrist in charge of the mental health establishment is of the opinion that the conditions specified under sub-section (1) are no longer applicable, he shall terminate the admission under this section, and inform the person and his nominated representative accordingly.

(14) Non applicability of conditions referred to in sub-section (13) shall not preclude the person with mental illness remaining as an independent patient.

(15) In a case, a person with the mental illness admitted under this section has been discharged, such person shall not be readmitted under this section within a period of seven days from the date of his discharge.

(16) In case a person referred to in sub-section (15) requires readmission within a period of seven days referred to in that sub-section, such person shall be considered for readmission in accordance with the provisions of section 99.

(17) If the medical officer or psychiatrist in charge of the mental health establishment is of the opinion that the person with mental illness admitted under this section in the mental health establishment requires or is likely to require further treatment beyond the period of thirty days, then such medical officer or psychiatrist shall be duty bound to refer the matter to be examined by two psychiatrists for his admission beyond thirty days.

99. (1) If a person with mental illness admitted under section 98 requires continuous admission and treatment beyond thirty days or a person with mental illness discharged under sub-section (15) of that section requires readmission within seven days of such discharge, he shall be admitted in accordance with the provisions of this section.

(2) The medical officer or psychiatrist in charge of a mental health establishment, upon application by the nominated representative of a person with mental illness, shall continue admission of such person with mental illness, if—

(a) two psychiatrists have independently examined the person with mental illness in the preceding seven days and both independently conclude based on the examination and, on information provided by others that the person has a mental illness of a severity that the person—

(i) has consistently over time threatened or attempted to cause bodily harm to himself; or

(ii) has consistently over time behaved violently towards another person or has consistently over time caused another person to fear bodily harm from him; or

(iii) has consistently over time shown an inability to care for himself to a degree that places the individual at risk of harm to himself;

(b) both psychiatrists, after taking into account an advance directive, if any, certify that admission to a mental health establishment is the least restrictive care option possible under the circumstances; and

(c) the person continues to remain ineligible to receive care and treatment as a independent patient as the person cannot make mental health care and treatment

Admission and treatment of persons with mental illness, with high support needs, in mental health establishment, beyond thirty days (supported admission beyond thirty days).

decisions independently and needs very high support from his nominated representative, in making decisions.

(3) The medical officer or psychiatrist in charge of the mental health establishment shall report all admissions or readmission under this section, within a period of seven days of such admission or readmission, to the concerned Board.

(4) The Board shall, within a period of twenty-one days from the date of last admission or readmission of person with mental illness under this section, permit such admission or readmission or order discharge of such person.

(5) While permitting admission or readmission or ordering discharge of such person under sub-section (4), the Board shall examine—

(a) the need for institutional care to such person;

(b) whether such care cannot be provided in less restrictive settings based in the community.

(6) In all cases of application for readmission or continuance of admission of a person with mental illness in the mental health establishment under this section, the Board may require the medical officer or psychiatrist in charge of treatment of such person with mental illness to submit a plan for community based treatment and the progress made, or likely to be made, towards realising this plan.

(7) The person referred to in sub-section (4) shall not be permitted to continue in the mental health establishment in which he had been admitted or his readmission in such establishment merely on the ground of non-existence of community based services at the place where such person ordinarily resides.

(8) The admission of a person with mental illness to a mental health establishment under this section shall be limited to a period up to ninety days in the first instance.

(9) The admission of a person with mental illness to a mental health establishment under this section beyond the period of ninety days may be extended for a period of one hundred and twenty days at the first instance and thereafter for a period of one hundred and eighty days each time after complying with the provisions of sub-sections (1) to (7).

(10) If the Board refuses to permit admission or continuation thereof or readmission under sub-section (9), or on the expiry of the periods referred to in sub-section (9) or earlier if such person no longer falls within the criteria for admission under sub-section (1), such person shall be discharged from such mental health establishment.

(11) If a person with mental illness has made an advance directive, it shall be taken into account before the commencement of treatment.

(12) If a person with mental illness admitted under this section, requires nearly hundred per cent. support from his nominated representative, in making decision in respect of his treatment, the nominated representative may temporarily consent to the treatment plan of such person on his behalf.

(13) In a case where consent has been given under sub-section (12), the medical officer or psychiatrist in charge of the mental health establishment shall record such consent in the medical records of such person with mental illness and review on the expiry of every fortnight, the capacity of such person to give consent.

(14) A person with mental illness admitted under this section, or his or her nominated representative or a representative of a registered non-governmental organisation with the consent of the person, may apply to the concerned Board for review of the decision of the medical officer or psychiatrist in charge of medical health establishment to admit such

person in such establishment and the decision of the Board thereon shall be binding on all parties.

(15) Notwithstanding anything contained in this Act, if the medical officer or psychiatrist in charge of the mental health establishment is of the opinion that the conditions under sub-section (1) are no longer applicable, such medical officer or psychiatrist shall discharge such person from such establishment and inform such person and his nominated representative accordingly.

(16) The person with mental illness referred to in sub-section (15) may continue to remain in the mental health establishment as an independent patient.

100. (1) The medical officer or psychiatrist in charge of the mental health establishment may grant leave to any person with mental illness admitted under section 96 or section 98 or section 99, to be absent from the establishment subject to such conditions, if any, and for such duration as such medical officer or psychiatrist may consider necessary.

Leave of absence.

(2) The leave referred to in sub-section (1) shall not be extended beyond the period of the duration of admission permissible under section 96 or section 98 or section 99, as the case may be.

(3) The medical officer or psychiatrist in charge of the mental health establishment shall obtain the consent of the nominated representative before taking a decision of granting leave.

(4) The medical officer or psychiatrist in charge of the mental health establishment may in writing cancel the leave of absence of the person with mental illness admitted in such establishment if he considers it appropriate to do so in the interest of such person.

(5) If the person with mental illness, on expiry of the period of his leave or on cancellation of his leave of absence under sub-section (4) does not return to the establishment, the medical officer or psychiatrist in charge of the mental health establishment shall first contact the person on leave and his nominated representative.

(6) If the person with mental illness and his nominated representative feel that continued admission in the mental health establishment is not necessary, then, such person and his nominated representative shall communicate the same to the medical officer or psychiatrist in charge of the mental health establishment, who shall formally discharge such person from the mental health establishment.

(7) If the medical officer or psychiatrist in charge of the mental health establishment has reason to believe that the person requires ongoing admission to a mental health establishment and the nominated representative agrees with the assessment of such medical officer or psychiatrist, and such person with mental illness refuses to return to the hospital on expiry of leave or cancellation of his leave of absence, the medical officer or the psychiatrist in charge of the mental health establishment shall report to the Police Officer in charge of the police station within the limits of whose jurisdiction the mental health establishment is situated, to convey the person to the mental health establishment.

(8) If the person with mental illness referred to in sub-section (7), is not conveyed by the Police Officer for any reasons, to the mental health establishment within one month of the expiry of his leave or cancellation of his leave of absence, as the case may be, such person shall be deemed to have been discharged from such mental health establishment.

(9) The provisions of sub-section (8) shall not preclude readmission of the person with mental illness in accordance with the provisions of this Act.

Absence with-
out leave or
discharge.

101. If a person with mental illness admitted to a mental health establishment under this Act absents himself without leave or without discharge from the mental health establishment, he shall be taken into protection by any Police Officer at the request of the medical officer or psychiatrist in charge of the mental health establishment and taken back to the mental health establishment immediately:

Provided that in the case of a person with mental illness not admitted under section 112, the provisions of this section shall not apply after the expiry of a period of one month from the date of such absence of such person from the mental health establishment.

Transfer of
persons with
mental
illness from
one mental
health
establish-
ment to
another
mental
health
establish-
ment.

102. (1) A person with mental illness admitted to a mental health establishment under section 96 or section 98 or section 99 or section 112, as the case may be, may subject to any general or special order of the Board be removed from such mental health establishment and admitted to another mental health establishment within the State or with the consent of the Commission to any mental health establishment in any other State:

Provided that no person with mental illness admitted to a mental health establishment under an order made in pursuance of an application made under this Act shall be so removed unless intimation and reasons for the transfer have been given to the person with mental illness and his nominated representative.

(2) The State Government may make such general or special order as it thinks fit directing the removal of any prisoner with mental illness from the place where he is for the time being detained, to any mental health establishment or other place of safe custody in the State or to any mental health establishment or other place of safe custody in any other State with the consent of the Government of that other State.

Emergency
treatment.

103. (1) Notwithstanding anything contained in this Act, any medical treatment, including treatment for mental illness, may be provided by any registered medical practitioner to a person with mental illness either at a health establishment or in the community, subject to the informed consent of the nominated representative, where the nominated representative is available, and where it is immediately necessary to prevent—

(a) death or irreversible harm to the health of the person; or

(b) the person inflicting serious harm to himself or herself or to others; or

(c) the person causing serious damage to property belonging to himself or herself or to others where such behaviour is believed to flow directly from the person's mental illness.

Explanation.—For the purposes of this section, “emergency treatment” includes transportation of the person with mental illness to a nearest mental health establishment for assessment.

(2) Nothing in this section shall allow any medical officer or psychiatrist to give to the person with mental illness medical treatment which is not directly related to the emergency treatment specified under sub-section (1).

(3) Nothing in this section shall allow any medical officer or psychiatrist to use electro-convulsive therapy as a form of treatment.

(4) The emergency treatment referred to in this section shall be limited to seventy-two hours or till the person with mental illness has been assessed at a mental health establishment, whichever is earlier:

Provided that during a disaster or emergency declared by the appropriate Government, the period of emergency treatment referred to in this sub-section may extend up to seven days.

104. (1) Notwithstanding anything contained in this Act, the following treatments shall not be performed on any person with mental illness—

Prohibited procedures.

(a) electro-convulsive therapy without the use of muscle relaxants and anaesthesia;

(b) electro-convulsive therapy for minors;

(c) sterilisation of men or women, when such sterilisation is intended as a treatment for mental illness;

(d) chained in any manner or form whatsoever.

(2) Notwithstanding anything contained in sub-section (1), if, in the opinion of psychiatrist in charge of a minor's treatment, electro-convulsive therapy is required, then, such treatment shall be done with the consent of the guardian and prior permission of the concerned Board.

105. (1) Notwithstanding anything contained in this Act, psychosurgery shall not be performed as a treatment for mental illness unless—

Restriction on psychosurgery for persons with mental illness.

(a) the informed consent of the person on whom the surgery is being performed; and

(b) approval from the concerned Board to perform the surgery,

has been obtained.

(2) The Commission may make regulations for the purpose of carrying out the provisions of this section.

106. (1) The physical restraint or seclusion may only be used when,—

Restraints and seclusion.

(a) it is the only means available to prevent imminent and immediate harm to person concerned or to others;

(b) it is authorised by the psychiatrist in charge of the person's treatment at the mental health establishment.

(2) Physical restraint or seclusion shall not be used for a period longer than it is absolutely necessary to prevent the immediate risk of significant harm.

(3) The medical officer or psychiatrist in charge of the mental health establishment shall be responsible for ensuring that the method, nature of restraint or seclusion, justification for its imposition and the duration of the restraint or seclusion are immediately recorded in the person's medical notes.

(4) The restraint or seclusion shall not be used as a form of punishment or deterrent in any circumstance and the mental health establishment shall not use restraint or seclusion merely on the ground of shortage of staff in such establishment.

(5) The nominated representative of the person with mental illness shall be informed about every instance of seclusion or restraint within a period of twenty-four hours.

(6) A person who is placed under restraint or seclusion shall be kept in a place where he can cause no harm to himself or others and under regular ongoing supervision of the medical personnel at the mental health establishment.

(7) The mental health establishment shall include all instances of restraint and seclusion, in the report to be sent to the concerned Board on a monthly basis.

(8) The Commission may make regulations for the purpose of carrying out the provisions of this section.

(9) The Board may order a mental health establishment to desist from applying restraint and seclusion if the Board is of the opinion that the mental health establishment is persistently and wilfully ignoring the provisions of this section.

Discharge plan-
ning.

107. (1) Whenever a person undergoing treatment for mental illness in a mental health establishment is to be discharged into the community or to a different mental health establishment or where a new psychiatrist is to take responsibility of the person's care and treatment, the psychiatrist who has been responsible for the person's care and treatment shall consult with the person with mental illness, the nominated representative, the family member or care-giver with whom the person with mental illness shall reside on discharge from the hospital, the psychiatrist expected to be responsible for the person's care and treatment in the future, and such other persons as may be appropriate, as to what treatment or services would be appropriate for the person.

(2) The psychiatrist responsible for the person's care shall in consultation with the persons referred to in sub-section (1) ensure that a plan is developed as to how treatment or services shall be provided to the person with mental illness.

(3) The discharge planning under this section shall apply to all discharges from a mental health establishment.

Research.

108. (1) The professionals conducting research shall obtain free and informed consent from all persons with mental illness for participation in any research involving interviewing the person or psychological, physical, chemical or medicinal interventions.

(2) In case of research involving any psychological, physical, chemical or medicinal interventions to be conducted on person who is unable to give free and informed consent but does not resist participation in such research, permission to conduct such research shall be obtained from concerned State Authority.

(3) The State Authority may allow the research to proceed based on informed consent being obtained from the nominated representative of persons with mental illness, if the State Authority is satisfied that—

(a) the proposed research cannot be performed on persons who are capable of giving free and informed consent;

(b) the proposed research is necessary to promote the health of the population represented by the person;

(c) the purpose of the proposed research is to obtain knowledge relevant to the particular health needs of persons with mental illness;

(d) a full disclosure of the interests of persons and organisations conducting the proposed research is made and there is no conflict of interest involved; and

(e) the proposed research follows all the national and international guidelines and regulations concerning the conduct of such research and ethical approval has been obtained from the institutional ethics committee where such research is to be conducted.

(4) The provisions of this section shall not restrict research based study of the case notes of a person who is unable to give informed consent, so long as the anonymity of the persons is secured.

CHAPTER XIII

RESPONSIBILITIES OF OTHER AGENCIES

109. (1) Every officer in charge of a police station shall have a duty—

(a) to take under protection any person found wandering at large within the limits of the police station whom the officer has reason to believe has mental illness and is incapable of taking care of himself; or

(b) to take under protection any person within the limits of the police station whom the officer has reason to believe to be a risk to himself or others by reason of mental illness.

(2) The officer in charge of a police station shall inform the person who has been taken into protection under sub-section (1), the grounds for taking him into such protection or his nominated representative, if in the opinion of the officer such person has difficulty in understanding those grounds.

(3) Every person taken into protection under sub-section (1) shall be taken to the nearest public health establishment as soon as possible but not later than twenty-four hours from the time of being taken into protection, for assessment of the person's health care needs.

(4) No person taken into protection under sub-section (1) shall be detained in the police lock up or prison in any circumstances.

(5) The medical officer in charge of the public health establishment shall be responsible for arranging the assessment of the person and the needs of the person with mental illness will be addressed as per other provisions of this Act as applicable in the particular circumstances.

(6) The medical officer or psychiatrist in charge of the public mental health establishment if on assessment of the person finds that such person does not have a mental illness of a nature or degree requiring admission to the mental health establishment, he shall inform his assessment to the police officer who had taken the person into protection and the police officer shall take the person to the person's residence or in case of homeless persons, to a Government establishment for homeless persons.

(7) In case of a person with mental illness who is homeless or found wandering in the community, a First Information Report of a missing person shall be lodged at the concerned police station and the station house officer shall have a duty to trace the family of such person and inform the family about the whereabouts of the person.

110. (1) Every officer in charge of a police station, who has reason to believe that any person residing within the limits of the police station has a mental illness and is being ill-treated or neglected, shall forthwith report the fact to the Magistrate within the local limits of whose jurisdiction the person with mental illness resides.

(2) Any person who has reason to believe that a person has mental illness and is being ill-treated or neglected by any person having responsibility for care of such person, shall report the fact to the police officer in charge of the police station within whose jurisdiction the person with mental illness resides.

(3) If the Magistrate has reason to believe based on the report of a police officer or otherwise, that any person with mental illness within the local limits of his jurisdiction is

Duties of police officers in respect of persons with mental illness.

Report to Magistrate of person with mental illness in private residence who is ill-treated or neglected.

being ill-treated or neglected, the Magistrate may cause the person with mental illness to be produced before him and pass an order in accordance with the provisions of section 111.

Conveying or admitting person with mental illness to mental health establishment by Magistrate.

111. (1) When any person with mental illness or who may have a mental illness appears or is brought before a Magistrate, the Magistrate may, order in writing—

(a) that the person is conveyed to a public mental health establishment for assessment and treatment, if necessary and the mental health establishment shall deal with such person in accordance with the provisions of the Act; or

(b) to authorise the admission of the person with mental illness in a mental health establishment for such period not exceeding ten days to enable the medical officer or psychiatrist in charge of the mental health establishment to carry out an assessment of the person and to plan for necessary treatment, if any.

(2) On completion of the period of assessment referred to in sub-section (1), the medical officer or psychiatrist in charge of the mental health establishment shall submit a report to the Magistrate and the person shall be dealt with in accordance with the provisions of this Act.

Prisoners with mental illness.

112. (1) An order under section 30 of the Prisoners Act, 1900 or under section 144 of the Air Force Act, 1950, or under section 145 of the Army Act, 1950, or under section 143 or section 144 of the Navy Act, 1957, or under section 330 or section 335 of the Code of Criminal Procedure, 1973, directing the admission of a prisoner with mental illness into any suitable mental health establishment, shall be sufficient authority for the admission of such person in such establishment to which such person may be lawfully transferred for care and treatment therein.

3 of 1900.
45 of 1950.
46 of 1950.
62 of 1957.
2 of 1974.

(2) The medical officer of a prison or jail shall send a quarterly report to the concerned Board certifying therein that there are no prisoners with mental illness in the prison or jail.

(3) The Board may visit the prison or jail and ask the medical officer as to why the prisoner with mental illness, if any, has been kept in the prison or jail and not transferred for treatment to a mental health establishment.

(4) The medical officer in charge of a mental health establishment wherein any person referred to in sub-section (1) is detained, shall once in every six months, make a special report regarding the mental and physical condition of such person to the authority under whose order such person is detained.

Persons in custodial institutions.

113. If it appears to the person in charge of a State run custodial institution (including beggars homes, orphanages, women's protection homes and children homes) that any resident of the institution has, or is likely to have, a mental illness, then, he shall take such resident of the institution to the nearest mental health establishment run or funded by the appropriate Government for assessment and treatment, as necessary.

Question of mental illness in judicial process.

114. (1) Notwithstanding anything contained in any other law for the time being in force, a person's current or past admission to a mental health establishment or a person's current or past treatment for mental illness shall not by itself, without prejudice to the provisions of any law for the time being force or custom or usage governing personnel laws of such person, be a ground for divorce.

(2) If during any judicial process before any competent court, proof of mental illness is produced and is challenged by the other party, the court shall refer the same for further

scrutiny to the concerned Board and the Board shall, after examination of the person alleged to have a mental illness, either by itself or through a committee of experts, submit its opinion to the court.

CHAPTER XIV

RESTRICTION TO DISCHARGE FUNCTIONS BY PROFESSIONALS NOT COVERED BY PROFESSION

115. No mental health professional or medical practitioner shall discharge any duty or perform any function not authorised by this Act or specify or recommend any medicine or treatment not authorised by the field of his profession.

Restriction to discharge functions by professionals not covered by profession.

CHAPTER XV

OFFENCES AND PENALTIES

116. (1) Whoever carries on a mental health establishment without registration shall be liable to a penalty which shall not be less than five thousand rupees but which may extend to fifty thousand rupees for first contravention or a penalty which shall not be less than fifty thousand rupees but which may extend to two lakh rupees for a second contravention or a penalty which shall not be less than two lakh rupees but which may extend to five lakh rupees for every subsequent contravention.

Penalties for establishing or maintaining mental health establishment in contravention of provisions of this Act.

(2) Whoever knowingly serves in a mental health establishment which is not registered under this Act, shall be liable to a penalty which may extend to twenty five thousand rupees.

(3) Save as otherwise provided in this Act, the penalty under this section shall be adjudicated by the State Authority.

(4) Whoever fails to pay the amount of penalty, the State Authority may forward the order to the Collector of the district in which such person owns any property or resides or carries on his business or profession or where the mental health establishment is situated, and the Collector shall recover from such persons or mental health establishment the amount specified thereunder, as if it were an arrear of land revenue.

(5) All sums realised by way of penalties under this Chapter shall be credited to the Consolidated Fund of India.

117. Any person who contravenes any of the provisions of this Act, or of any rule or regulation made thereunder shall for first contravention be punishable with imprisonment for a term which may extend to six months, or with a fine which may extend to ten thousand rupees or with both, and for any subsequent contravention with imprisonment for a term which may extend to two years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees or with both.

Punishment for contravention of provisions of the Act or rules or regulations made thereunder.

118. (1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Offences by companies.

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he has exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of

any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.

CHAPTER XVI

MISCELLANEOUS

Power to call for information

119. (1) The Central Government may, by a general or special order, call upon the Authority or the Commission or the Board to furnish, periodically or as and when required any information concerning the activities carried on by the Authority or the Commission or the Board, as the case may be, in such form as may be prescribed, to enable that Government, to carry out the purposes of this Act.

(2) The State Government may, by a general or special order, call upon the Authority to furnish, periodically or as and when required any information concerning the activities carried on by the Authority in such form as may be prescribed, to enable that Government, to carry out the purposes of this Act.

Power of Central Government to issue directions.

120. (1) Without prejudice to the foregoing provisions of this Act, the Authority shall, in exercise of its powers or the performance of its functions under this Act, be bound by such directions on questions of policy, other than those relating to technical and administrative matters, as the Central Government may give in writing to it from time to time:

Provided that the Authority shall, as far as practicable, be given an opportunity to express its views before any direction is given under this sub-section.

(2) The decision of the Central Government whether a question is one of policy or not shall be final.

Power of Central Government to supersede Central Authority.

121. (1) If at any time the Central Government is of the opinion—

(a) that on account of circumstances beyond the control of the Central Authority, it is unable to discharge the functions or perform the duties imposed on it by or under the provisions of this Act; or

(b) that the Central Authority has persistently defaulted in complying with any direction given by the Central Government under this Act or in the discharge of the functions or performance of the duties imposed on it by or under the provisions of this Act; or

(c) that circumstances exist which render it necessary in the public interest so to do,

the Central Government may, by notification and for reasons to be specified therein, supersede the Central Authority for such period, not exceeding six months, as may be specified in the notification:

Provided that before issuing any such notification, the Central Government shall give a reasonable opportunity to the Central Authority to make representations against the proposed supersession and shall consider representations, if any, of the Central Authority.

(2) Upon the publication of a notification under sub-section (1), superseding the Central Authority,—

(a) the chairperson and other members shall, as from the date of supersession, vacate their offices as such;

(b) all the powers, functions and duties which may, by or under the provisions of this Act, be exercised or discharged by or on behalf of the Central Authority shall, until the Central Authority is reconstituted under sub-section (3), be exercised and discharged by the Central Government or such authority as the Central Government may specify in this behalf;

(c) all properties owned or controlled by the Central Authority shall, until the Central Authority is reconstituted under sub-section (3), vest in the Central Government.

(3) On or before the expiration of the period of supersession specified in the notification issued under sub-section (1), the Central Government shall reconstitute the Central Authority by a fresh appointment of its chairperson and other members and in such case any person who had vacated his office under clause (a) of sub-section (2) shall not be deemed to be disqualified for re-appointment.

(4) The Central Government shall cause a notification issued under sub-section (1) and a full report of any action taken under this section and the circumstances leading to such action to be laid before each House of Parliament at the earliest.

122. (1) If at any time the State Government is of the opinion—

(a) that on account of circumstances beyond the control of the State Authority, it is unable to discharge the functions or perform the duties imposed on it by or under the provisions of this Act; or

(b) that the State Authority has persistently defaulted in complying with any direction given by the State Government under this Act or in the discharge of the functions or performance of the duties imposed on it by or under the provisions of this Act; or

(c) that circumstances exist which render it necessary in the public interest so to do,

the State Government may, by notification and for reasons to be specified therein, supersede the State Authority for such period, not exceeding six months, as may be specified in the notification:

Provided that before issuing any such notification, the State Government shall give a reasonable opportunity to the State Authority to make representations against the proposed supersession and shall consider representations, if any, of the State Authority.

(2) Upon the publication of a notification under sub-section (1) superseding the State Authority,—

(a) the chairperson and other members shall, as from the date of supersession, vacate their offices as such;

(b) all the powers, functions and duties which may, by or under the provisions of this Act, be exercised or discharged by or on behalf of the State Authority shall, until the State Authority is reconstituted under sub-section (3), be exercised and discharged by the State Government or such authority as the State Government may specify in this behalf;

(c) all properties owned or controlled by the State Authority shall, until the State Authority is reconstituted under sub-section (3), vest in the State Government.

Power of
State
Government
to supersede
State
Authority.

(3) On or before the expiration of the period of supersession specified in the notification issued under sub-section (1), the State Government shall reconstitute the State Authority by a fresh appointment of its chairperson and other members and in such case any person who had vacated his office under clause (a) of sub-section (2) shall not be deemed to be disqualified for re-appointment.

(4) The State Government shall cause a notification issued under sub-section (1) and a full report of any action taken under this section and the circumstances leading to such action to be laid before the State Legislature at the earliest.

Special provisions for States in north-east and hill States.

123. (1) Notwithstanding anything contained in this Act, the provisions of this Act shall, taking into consideration the communication, travel and transportation difficulties, apply to the States of Assam, Meghalaya, Tripura, Mizoram, Manipur, Nagaland, Arunachal Pradesh and Sikkim, with following modifications, namely:—

(a) under sub-section (3) of section 80, the president of the Commission may constitute a single Board for all the States;

(b) in sub-section (2) of section 88, reference to the period of “seven days”, and in sub-section (3) of that section, reference to the period of “twenty-one days” shall be construed as “ten days” and “thirty days”, respectively;

(c) in sub-section (9) of section 96, reference to the period of “seventy-two hours” shall be construed as “one hundred twenty hours”, and in sub-sections (3) and (12) of that section, reference to a period of “seven days” shall be construed as “ten days”;

(d) in sub-section (3) of section 97, reference to the period of “twenty-four hours” shall be construed as “seventy-two hours”;

(e) in clauses (a) and (b) of sub-section (9) of section 98, reference to the period of “three days” and “seven days” shall be construed as “seven days” and “ten days” respectively;

(f) in sub-section (3) of section 99, reference to the period of “seven days” and in sub-section (4) of that section, reference to the period of “twenty-one days” shall be construed as “ten days” and “thirty days” respectively;

(g) in sub-section (4) of section 103, reference to the period of “seventy-two hours” shall be construed as “one hundred twenty hours”.

(2) The provisions of clauses (b) to (g) of sub-section (1) shall also apply to the States of Uttarakhand, Himachal Pradesh and Jammu and Kashmir and the Union territories of Lakshadweep and Andaman and Nicobar Islands.

(3) The provisions of this section shall cease to have effect on the expiry of a period of ten years from the commencement of this Act, except as respects things done or omitted to be done before such cesser, and upon such cesser section 6 of the General Clauses Act, 1897, shall apply as if this Act had then been repealed by a Central Act.

10 of 1897.

Presumption of mental illness in case of attempt to commit suicide by person.

124. (1) Notwithstanding anything contained in section 309 of the Indian Penal Code, any person who attempts to commit suicide shall be presumed, unless proved otherwise, to be suffering from mental illness at the time of attempting suicide and shall not be liable to punishment under the said section.

45 of 1860.

(2) The appropriate Government shall have a duty to provide care, treatment and rehabilitation to a person, having mental illness and who attempted to commit suicide, to reduce the risk of recurrence of attempt to commit suicide.

Bar of jurisdiction.

125. No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Commission or the Board is empowered by or under this Act

to determine, and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

14 of 1987. **126.** The Central Government may, if it considers so necessary in the interest of persons with mental illness being governed by the Mental Health Act, 1987, take appropriate interim measures by making scheme for the smooth implementation of the provisions of this Act.

Transitory provisions.

45 of 1860. **127.** The chairperson, president and other members and the officers and other employees of the Authority, Commission and Board shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

Chairperson, members and staff of Authority Commission and Board to be public servants.

128. No suit, prosecution or other legal proceeding shall lie against the appropriate Government or against the Chairperson or President or any other Member of the Central Authority or the State Authority or the Commission or the Board, as the case may be, for anything which is in good faith done or intended to be done in pursuance of this Act or any rule or regulation made thereunder in the discharge of official duties.

Protection of action taken in good faith..

129. The provisions of this Act shall have overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

Act to have overriding effect.

130. (1) The appropriate Government may, by notification, make rules to carry out the provisions of this Act.

Power to make rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the manner of nomination of members of the Central Authority under sub-section (2) of section 34;

(b) the salaries and allowances payable to, and the other terms and conditions of service of, the chairperson and other members of the Central Authority under sub-section (3) of section 35;

(c) the procedure for registration (including the fees to be levied for such registration) of the mental health establishments under sub-section (2) of section 43;

(d) the manner of nomination of members of the State Authority under sub-section (2) of section 46;

(e) the salaries and allowances payable to, and the other terms and conditions of service of, the chairperson and other members of the State Authority under sub-section (3) of section 47;

(f) the procedure for registration (including the fees to be levied for such registration) of the mental health establishments under sub-section (2) of section 55;

(g) the form of accounts and other relevant records and annual statement of accounts under sub-section (1) of section 59;

(h) the form in, and the time within which an annual report shall be prepared under section 60;

(i) the form of accounts and other relevant records and annual statement of accounts under sub-section (1) of section 63;

(j) the form in, and the time within which an annual report shall be prepared under section 64;

(k) the form of application to be submitted by the mental health establishment with an undertaking that the mental health establishment fulfils the minimum standards, if any, specified by the Authority, under the *Explanation* to sub-section (2) of section 65;

(l) the form of certificate of registration under sub-section (3) of section 65;

(m) the form of application, the detail and fees to be accompanied with it under sub-section (1) of section 66;

(n) the form of certificate of provisional registration containing particulars and information under sub-section (4) of section 66;

(o) the fees for renewal of registration under sub-section (11) of section 66;

(p) the person or persons (including representatives of the local community) for the purpose of conducting an audit of the registered mental health establishments under sub-section (1) and fees to be charged by the Authority for conducting such audit under sub-section (2) of section 67;

(q) the person or persons for the purpose of conducting an inspection or inquiry of the mental health establishments under sub-section (1) of section 68;

(r) the manner of enter and search of a mental health establishment operating without registration under sub-section (6) of section 68;

(s) the fees for issuing a duplicate certificate under sub-section (2) of section 70;

(t) the form and manner in which the Authority shall maintain in digital format a register of mental health establishments, the particulars of the certificate of registration so granted in a separate register to be maintained under section 71;

(u) the salaries and allowances payable to, and the other terms and conditions of service of, the president and other members of the Commission under sub-section (3) of section 77;

(v) the salaries and allowances payable to, and the other terms and conditions of service of, the officers and other employees of the Commission under sub-section (3) of section 79;

(w) other disqualifications of president or members of the Commission under clause (e) of sub-section (1) of section 82;

(x) other disqualifications of chairperson or members of the Board under clause (e) of sub-section (2) of section 82;

(y) the honorarium and other allowances payable to, and the other terms and conditions of service of, the chairperson and members of the Board under sub-section (3) of section 83;

(z) the form for furnishing periodical information under sub-section (1) or sub-section (2) of section 119;

(za) any other matter which is required to be, or may be, specified by rules or in respect of which provision is to be made by rules.

Power of
Central
Authority to
make
regulations.

131. (1) The Central Authority may, by notification, make regulations, consistent with the provisions of this Act and the rules made thereunder, to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

(a) the salaries and allowances payable to, and the other terms and conditions of service (including the qualifications, experience and manner of appointment) of, the chief executive officer and other officers and employees of the Central Authority under sub-section (3) of section 40;

(b) the times and places of meetings of the Central Authority and rules of procedure in regard to the transaction of business at its meetings (including quorum at such meetings) under sub-section (1) of section 44;

(c) the minimum standards of facilities and services under clause (a); the minimum qualifications for the personnel engaged in mental health establishment under clause (b); provisions for maintenance of records and reporting under clause (c); and other conditions under clause (d), of sub-section (4) of section 65;

(d) categories of different mental health establishments under clause (a) of sub-section (5) of section 65;

(e) the form of application to be made by the mental health establishment and the fees to be accompanied with it under sub-section (12) of section 66;

(f) the manner of filing objections under sub-section (14) of section 66;

(g) any other matter which is required to be, or may be, specified by regulations or in respect of which provision is to be made by regulations.

132. (1) The Commission may, by notification, make regulations, consistent with the provisions of the Act and the rules made thereunder, to carry out the provisions of this Act.

Power of Commission to make regulations.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

(a) additional regulations, regarding the procedure of advance directive to protect the rights of persons with mental illness under sub-section (3) of section 12;

(b) the times and places and rules of procedure in regard to the transaction of business at its meetings to be observed by the Commission and the Board under section 87;

(c) the procedure for advance directive under clause (c) of section 89;

(d) regulations for the purposes of carrying out the provisions of sections 105 and 106;

(e) any other matter which is required to be, or may be, specified by regulations or in respect of which provision is to be made by regulations.

133. (1) The State Authority may, by notification, make regulations, consistent with the provision of this Act and the rules made thereunder, to carry out the provisions of this Act.

Power of State Authority to make regulations.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

(a) the minimum quality standards of mental health services under sub-section (9) of section 18;

(b) the salaries and allowances payable to, and the other terms and conditions of service (including the qualifications, experience and manner of appointment) of the chief executive officer and other officers and employees of the State Authority under sub-section (3) of section 52;

(c) the manner in which the State Authority shall publish the list of registered mental health professionals under clause (d) of sub-section (1) of section 55;

(d) the times and places of meetings of the State Authority and rules of procedure in regard to the transaction of business at its meetings (including quorum at such meetings) under sub-section (1) of section 56;

(e) the form of application to be made by the mental health establishment and the fees to be accompanied with it under sub-section (12) of section 66;

(f) the manner of filing objections under sub-section (14) of section 66;

(g) any other matter which is required to be, or may be, specified by regulations or in respect of which provision is to be made by regulations.

Laying of
rules and
regulations.

134. (1) Every rule made by the Central Government and every regulation made by the Central Authority and the Commission under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation, as the case may be, or both Houses agree that the rule or regulation, as the case may be, should not be made, the rule or regulation, as the case may be, shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation, as the case may be.

(2) Every rule made by the State Government and every regulation made by the State Authority under this Act shall be laid, as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House.

Power to
remove
difficulties.

135. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as may appear to be necessary or expedient for removing the difficulty:

Provided that no order shall be made under this section after the expiry of two years from the date of commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

Repeal and
saving.

136. (1) The Mental Health Act, 1987 is hereby repealed.

14 of 1987.

(2) Notwithstanding such repeal,—

(a) anything done or any action taken or purported to have been done or taken (including any rule, notification, inspection, order or declaration made or any document or instrument executed or any direction given or any proceedings taken or any penalty or fine imposed) under the repealed Act shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act;

(b) the Central Authority for Mental Health Services, and the State Authority for Mental Health Services established under the repealed Act shall, continue to function under the corresponding provisions of this Act, unless and until the Central Authority and the State Authority are constituted under this Act;

(c) any person appointed in the Central Authority for Mental Health Services, or the State Authority for Mental Health Services or any person appointed as the visitor under the repealed Act and holding office as such immediately before the

commencement of this Act, shall, on such commencement continue to hold their respective offices under the corresponding provisions of this Act, unless they are removed or until superannuated;

(d) any person appointed under the provisions of the repealed Act and holding office as such immediately before the commencement of this Act, shall, on such commencement continue to hold his office under the corresponding provisions of this Act, unless they are removed or until superannuated;

(e) any licence granted under the provisions of the repealed Act, shall be deemed to have been granted under the corresponding provisions of this Act unless the same are cancelled or modified under this Act;

(f) any proceeding pending in any court under the repealed Act on the commencement of this Act may be continued in that court as if this Act had not been enacted;

(g) any appeal preferred from the order of a Magistrate under the repealed Act but not disposed of before the commencement of this Act may be disposed of by the court as if this Act had not been enacted.

(3) The mention of the particular matters in sub-section (2) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 with regard to the effect of repeal.

STATEMENT OF OBJECTS AND REASONS

The United Nations Convention on the Rights of Persons with Disabilities, which was ratified by the Government of India in October, 2007, made it obligatory on the Government to align the policies and laws of the country with the Convention. The need for amendments to the Mental Health Act, 1987 was felt by the fact that the related law, i.e., the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 was also in the process of amendment. The Mental Health Act, 1987 could not protect the rights of persons with mental illness and promote their access to mental health care in the country.

2. In light of above, it is proposed to bring in a new legislation by repealing the Mental Health Act, 1987, and—

(a) Recognising that:

(i) Persons with mental illness constitute a vulnerable section of society and are subject to discrimination in our society;

(ii) Families bear financial hardship, emotional and social burden of providing treatment and care for their relatives with mental illness;

(iii) Persons with mental illness should be treated like other persons with health problems and the environment around them should be made conducive to facilitate recovery, rehabilitation and full participation in society;

(iv) The Mental Health Act, 1987 was insufficient to protect the rights of persons with mental illness and promote their access to mental health care in the country;

(b) And in order to:

(i) Protect and promote the rights of persons with mental illness during the delivery of health care in institutions and in the community;

(ii) Ensure health care, treatment and rehabilitation of persons with mental illness, is provided in the least restrictive environment possible, and in a manner that does not intrude on their rights and dignity. Community-based solutions, in the vicinity of the person's usual place of residence, are preferred to institutional solutions;

(iii) Provide treatment, care and rehabilitation to improve the capacity of the person to develop his or her full potential and to facilitate his or her integration into community life;

(iv) Fulfil the obligations under the Constitution and the obligations under various International Conventions ratified by India;

(v) Regulate the public and private mental health sectors within a rights framework to achieve the greatest public health good;

(vi) Improve accessibility to mental health care by mandating sufficient provision of quality public mental health services and non-discrimination in health insurance;

(vii) Establish a mental health system integrated into all levels of general health care; and

(viii) Promote principles of equity, efficiency and active participation of all stakeholders in decision making.

3. The Bill seeks to achieve the above objects.

GHULAM NABIAZAD

Notes on Clauses

Clause 1.—This clause seeks to provide for short title, extent and commencement of the proposed legislation.

Clause 2.—This clause seeks to provide the definitions of certain words and expressions used in various provisions of the Bill.

Clause 3.—This clause seeks to provide for determination of mental illness.

Clause 4.—This clause seeks to provide for the provisions regarding capacity to make mental health care decisions.

Clause 5.—This clause seeks to provide for the provision of advance directive.

Clause 6.—This clause seeks to provide for the manner of making advance directive.

Clause 7.—This clause seeks to provide for the duty of every Board to maintain an online register of all advance directives registered with it and make them available to the concerned mental health professionals as and when required.

Clause 8.—This clause provides for the revocation, amendment or cancellation of advance directive.

Clause 9.—This clause seeks to provide that the advance directive shall not apply to the emergency treatment given under section 103 to a person who made the advance directive.

Clause 10.—This clause seeks to provide for the duty of every medical officer in charge of a mental health establishment and the psychiatrist in charge of a person's treatment to propose or give treatment to a person with mental illness, in accordance with his valid advance directive.

Clause 11.—This clause seeks to provide for power to review, alter, modify or cancel advance directive.

Clause 12.—This clause seeks to provide for the review of advance directives.

Clause 13.—This clause seeks to provide for the liability of medical health professional in relation to advance directive.

Clause 14.—This clause seeks to provide for the appointment and revocation of nominated representative.

Clause 15.—This clause makes provision for a nominated representative of a minor.

Clause 16.—This clause seeks to provide for the revocation, alteration, etc., of nominated representative by Board.

Clause 17.—This clause seeks to provide for the duties of nominated representative.

Clause 18.—This clause seeks to provide for the right to access mental health care and treatment from mental health services run or funded by the appropriate Government.

Clause 19.—This clause seeks to provide for the right to community living.

Clause 20.—This clause seeks to provide for the right to protection from cruel, inhuman and degrading treatment.

Clause 21.—This clause seeks to provide for the right to equality and non-discrimination.

Clause 22.—This clause seeks to provide for the right to information.

Clause 23.—This clause seeks to provide that a person with mental illness shall have the right to confidentiality in respect of his mental health, mental health care, treatment and physical health care.

Clause 24.—This clause seeks to provide for the restriction on release of information in respect of mental illness.

Clause 25.—This clause seeks to provide for the right to access medical records.

Clause 26.—This clause seeks to provide for the right to personal contacts and communication.

Clause 27.—This clause seeks to provide for the right to legal aid.

Clause 28.—This clause seeks to provide for the right to make complaints about deficiencies in provision of services.

Clause 29.—This clause seeks to provide for the promotion of mental health and preventive programmes.

Clause 30.—This clause seeks to provide for the creating awareness about mental health and illness and reducing stigma associated with mental illness.

Clause 31.—This clause seeks to provide that the appropriate Government shall take measures as regard to human resource development and training, etc.

Clause 32.—This clause seeks to provide for the co-ordination within appropriate Government

Clause 33.—This clause seeks to provide for the establishment of Central Mental Health Authority.

Clause 34.—This clause seeks to provide for the composition of the Central Authority.

Clause 35.—This clause seeks to provide for the term of office, salaries and allowances of chairperson and members of the Central Authority.

Clause 36.—This clause seeks to provide for the resignation from office by a member of the Central Authority.

Clause 37.—This clause seeks to provide for the filling up of vacancies resulting by reason of death, resignation, removal, superannuation or completion of the term of office of any member of the Central Authority.

Clause 38.—This clause seeks to provide that vacancies etc. shall not invalidate proceedings of the Central Authority.

Clause 39.—This clause seeks to prevent the participation of a member of the Central Authority in a meeting of the Authority in case the member has any direct or indirect interest, whether pecuniary or otherwise, in any matter coming up for consideration at a meeting of the Central Authority.

Clause 40.—This clause seeks to provide for the officers and other employees of the Central Authority.

Clause 41.—This clause seeks to provide for the functions of chief executive officer of the Central Authority.

Clause 42.—This clause seeks to provide for the transfer of assets, liabilities of the Central Authority for Mental Health Services constituted under sub-section (1) of section 3 of the Mental Health Act, 1987

Clause 43.—This clause seeks to provide for the functions of the Central Authority.

Clause 44.—This clause seeks to provide for the meetings of the Central Authority.

Clause 45.—This clause seeks to provide for the establishment of the State Mental Health authority

Clause 46.—This clause seeks to provide for the composition of the State Authority

Clause 47.—This clause seeks to provide for the term of office, salaries and allowances of the chairperson and other members.

Clause 48.—This clause seeks to provide for the resignation from office of a member of the State Authority.

Clause 49.—This clause seeks to provide for the filling up of vacancies occurring by reason of death, resignation, removal, superannuation or completion of the term of office of any member of the State Authority.

Clause 50.—This clause seeks to provide that vacancies, etc., shall not invalidate proceedings of the State Authority.

Clause 51.—This clause seeks to prevent the participation of a member of the State Authority in a meeting of the Authority in case the member has any direct or indirect interest, whether pecuniary or otherwise, in any matter coming up for consideration at a meeting of the State Authority.

Clause 52.—This clause seeks to provide for the officers and other employees of the State Authority.

Clause 53.—This clause seeks to provide for the functions of chief executive officer of the State Authority.

Clause 54.—This clause seeks to provide for the transfer of assets, liabilities of the State Authority for Mental Health Services constituted under sub-section (1) of section 4 of the Mental Health Act, 1987.

Clause 55.—This clause seeks to provide for the functions of the State Authority.

Clause 56.—This clause seeks to provide for the meetings of the State Authority.

Clause 57.—This clause seeks to provide for the grants by the Central Government to the Central Authority.

Clause 58.—This clause seeks to provide for the Central Mental Health Authority Fund.

Clause 59.—This clause seeks to provide that the Central Authority shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government, in consultation with the Comptroller and Auditor-General of India.

Clause 60.—This clause seeks to provide for the Central Authority to prepare an annual report giving a full account of its activities during the previous year and laying of the same by the Central Government before both Houses of Parliament.

Clause 61.—This clause seeks to provide for the grants by the State Government to the State Authority.

Clause 62.—This clause seeks to provide for the State Mental Health Authority Fund.

Clause 63.—This clause seeks to provide that the State Authority shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the State Government, in consultation with the Comptroller and Auditor-General of India.

Clause 64.—This clause seeks to provide for the State Authority to prepare an annual report giving a full account of its activities during the previous year and laying of the same by the State Government before the State Legislature.

Clause 65.—This clause seeks to provide for the registration of mental health establishment.

Clause 66.—This clause seeks to provide for the procedure for registration, inspection and inquiry of mental health establishments

Clause 67.—This clause seeks to provide for the audit of mental health establishment

Clause 68.—This clause seeks to provide for the Authority to order an inspection or inquiry of any mental health establishment, *suo moto* or on a complaint received from any person with respect to non adherence of minimum standards specified by or under the proposed legislation or contravention of any provision thereof, to be made by such person as may be prescribed.

Clause 69.—This clause seeks to provide for the appeal to High Court against order of the State Authority refusing to grant registration or renewal of registration or cancellation of registration.

Clause 70.—This clause seeks to provide for the certificates, fees and register of mental health establishments.

Clause 71.—This clause seeks to provide for the maintenance of register of mental health establishment in digital format.

Clause 72.—This clause seeks to provide for the duty of mental health establishment to display information.

Clause 73.—This clause seeks to provide for the constitution of Mental Health Review Commission.

Clause 74.—This clause seeks to provide for the composition of Commission.

Clause 75.—This clause seeks to provide for the qualifications for appointment of president and members of Commission.

Clause 76.—This clause seeks to provide for the Selection Committee for the purpose of selection of the president and members of the Commission.

Clause 77.—This clause seeks to provide for the term of office, salaries and allowances of the president and other members of the Commission.

Clause 78.—This clause seeks to provide that the vacancies, etc., shall not invalidate proceedings of the Commission.

Clause 79.—This clause seeks to provide for the staff of the Commission.

Clause 80.—This clause seeks to provide for the constitution of Mental Health Review Boards.

Clause 81.—This clause seeks to provide for composition of the Board.

Clause 82.—This clause seeks to provide for disqualification and removal as the president or a member of the Commission.

Clause 83.—This clause seeks to provide for terms and conditions of service of the chairperson and members of the Board.

Clause 84.—This clause seeks to provide that the decisions of the Commission or the Board shall be by consensus, failing which by a majority of votes of members present and voting and in the event of equality of votes, the president or the chairperson, as the case may be, shall have a second or casting vote and that the quorum of a meeting of the Commission or the Board, as the case may be, shall be three members.

Clause 85.—This clause seeks to provide that any person with mental illness or his nominated representative or a representative of a registered non-governmental organisation,

with the consent of such a person, being aggrieved by the decision of any of the mental health establishment or whose rights under the proposed legislation have been violated, may make an application to the Board seeking redressal or appropriate relief.

Clause 86.—This clause seeks to provide that the proceedings before the Commission and the Board shall be deemed to be judicial proceedings within the meaning of sections 193, 219 and 228 of the Indian Penal Code.

Clause 87.—This clause seeks to provide for the meetings of the Commission and the Board.

Clause 88.—This clause seeks to provide for the proceedings before a Board.

Clause 89.—This clause seeks to provide for the powers and functions of the Commission.

Clause 90.—This clause seeks to provide for the Commission to appoint an Expert Committee to prepare a guidance document for medical practitioners and mental health professionals, containing procedures for assessing, when necessary or the capacity of persons to make mental health care or treatment decisions.

Clause 91.—This clause seeks to provide for powers and functions of the Board.

Clause 92.—This clause seeks to provide for appeal to High Court against order of Commission or Board by any person or establishment aggrieved by the decision of the Commission or a Board may, within a period of thirty days from such decision.

Clause 93.—This clause seeks to provide for grants by Central Government to the Commission.

Clause 94.—This clause seeks to provide for admission of a person with mental illness as independent patient in a mental health establishment.

Clause 95.—This clause seeks to provide for independent admission and treatment.

Clause 96.—This clause seeks to provide for admission of a minor.

Clause 97.—This clause seeks to provide for the discharge of independent patients.

Clause 98.—This clause seeks to provide for admission and treatment of persons with mental illness, with high support needs, in a mental health establishment, up to thirty days (supported admission).

Clause 99.—This clause seeks to provide for admission and treatment of persons with mental illness, with high support needs, in a mental health establishment, beyond thirty days (supported admission beyond thirty days).

Clause 100.—This clause seeks to provide for leave of absence from the mental health establishment.

Clause 101.—This clause seeks to provide for a person with mental illness admitted to a mental health establishment under the proposed legislation, to be taken into protection by any Police Officer at the request of the medical officer or psychiatrist in charge of the mental health establishment and taken back to the mental health establishment immediately if he absents himself without leave or without discharge from the mental health establishment.

Clause 102.—This clause seeks to provide for transfer of persons with mental illness from one mental health establishment to another mental health establishment.

Clause 103.—This clause seeks to provide for emergency treatment.

Clause 104.—This clause seeks to provide for prohibited procedures.

Clause 105.—This clause seeks to provide for restriction on psychosurgery for persons with mental illness.

Clause 106.—This clause seeks to provide for restrictions and seclusions.

Clause 107.—This clause seeks to provide for discharge planning.

Clause 108.—This clause seeks to provide that the professionals conducting research shall obtain free and informed consent from all persons with mental illness for participation in any research involving interviewing the person or psychological, physical, chemical or medicinal interventions.

Clause 109.—This clause seeks to provide for duties of police officers in respect of persons with mental illness.

Clause 110.—This clause seeks to provide for report, by the officer in charge of a police station to the Magistrate or by any person to the officer in charge of a police station within the local limits of whose jurisdiction the person with mental illness resides, of a person with mental illness in a private residence who is ill treated or neglected.

Clause 111.—This clause seeks to provide for conveying or admitting a person with mental illness to a mental health establishment by a Magistrate.

Clause 112.—This clause seeks to provide for provisions regarding prisoners with mental illness.

Clause 113.—This clause seeks to provide for the person in charge of a State run custodial institution (including beggars homes, orphanages, women's protection homes and children homes) to take such resident of the institution, who appears to have or is likely to have a mental illness, to the nearest mental health establishment run or funded by the appropriate Government for assessment and treatment, as necessary.

Clause 114.—This clause seeks to provide for question of mental illness in judicial process.

Clause 115.—This clause seeks to provide for restriction to discharge functions by professionals not covered by profession.

Clause 116.—This clause seeks to provide for penalties for establishing or maintaining a mental health establishment in contravention of provisions of the proposed legislation Act.

Clause 117.—This clause seeks to provide for punishment for contravention of the provisions of the proposed legislation or rules or regulations made thereunder.

Clause 118.—This clause seeks to provide for offences by companies.

Clause 119.—This clause seeks to provide for power of the Central Government to call upon the Authority or the Commission or the Board to furnish, periodically or as and when required any information concerning the activities carried on by the Authority or the Commission or the Board, as the case may be, in such form as may be prescribed, to enable that Government, to carry out the purposes of the Bill.

Clause 120.—This clause seeks to provide for power of the Central Government to issue directions in writing from time to time to the Authority on questions of policy, other than those relating to technical and administrative matters.

Clause 121.—This clause seeks to provide for power of the Central Government to supersede the Central Authority.

Clause 122.—This clause seeks to provide for power of State Government to supersede the State Authority.

Clause 123.—This clause seeks to provide for special provisions for States in north-east and hill States taking into consideration the communication, travel and transportation difficulties.

Clause 124.—This clause seeks to provide for presumption of mental illness in case of attempt to commit suicide by a person.

Clause 125.—This clause seeks to provide for bar of jurisdiction of civil courts to entertain any suit or proceeding in respect of any matter which the Commission or the Board is empowered by or under the proposed legislation to determine, and also that no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under proposed legislation.

Clause 126.—This clause seeks to provide for transitory provisions.

Clause 127.—This clause seeks to provide that the chairperson, members and staff of the Authority, Commission and Board shall be deemed to be public servants.

Clause 128.—This clause seeks to provide for protection of action taken in good faith.

Clause 129.—This clause seeks to provide that the proposed legislation shall have over-riding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than the proposed legislation.

Clause 130.—This clause seeks to empower the appropriate Government to make rules to carry out the provisions of the said legislation.

Clause 131.—This clause seeks to empower the Central Authority to make regulations.

Clause 132.—This clause seeks to empower the Commission to make regulations.

Clause 133.—This clause seeks to empower the State Authority to make regulations.

Clause 134.—This clause seeks to provide for laying of every rule made by the Central Government and every regulation made by the Central Authority and the Commission under the proposed legislation, as soon as may be after it is made, before each House of Parliament. This clause also seeks to provide for laying of every rule made by the State Government and every regulation made by the State Authority under the proposed legislation, as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House.

Clause 135.—This clause seeks to provide for the power to remove difficulties.

Clause 136.—This clause seeks to provide for repeal of the Mental Health Act, 1987 and saving the actions taken thereunder.

FINANCIAL MEMORANDUM

Sub-clauses (3) and (6) of clause 18 of the Bill provides that the appropriate Government shall make sufficient provisions, as may be necessary, for a range of services required by persons with mental illness at all general hospitals run or funded by such Government and basic and emergency mental health care services at all community health centres and upwards in the public health system run or funded by such Government. Sub-clause (7) of clause 18 provides that the persons with mental illness living below the poverty line whether or not in possession of a below poverty line card, or who are destitute or homeless shall be entitled to mental health treatment and services free of any charge and at no financial cost at all mental health establishments run or funded by the appropriate Government and at other mental health establishments designated by it. Sub-clause (11) of clause 18 provides for the appropriate Government to take measures to ensure that necessary budgetary provisions in terms of adequacy, priority, progress, and equity are made for effective implementation of the provisions of this clause.

2. Sub-clause (2) of clause 19 of the Bill provides that the appropriate Government shall, within a reasonable period, provide for or support the establishment of less restrictive community based establishments including halfway homes, group homes and the like for persons who no longer require treatment in more restrictive mental health establishments such as long stay mental hospitals.

3. Sub-clause (a) of clause 30 of the Bill provides for the appropriate Government to ensure that the provisions of the proposed legislation are given wide publicity through public media, including television, radio, print and online media at regular intervals.

4. Sub-clause (1) of clause 31 of the Bill provides that the appropriate Government shall take measures to address the human resource requirements of mental health services in the country by planning, developing and implementing educational and training programmes in collaboration with institutions of higher education and training, to increase the human resources available to deliver mental health interventions and to improve the skills of the available human resources to better address the needs of persons with mental illness. Sub-clause (2) of clause 31 provides that the appropriate Government shall train all medical officers in public health care establishments and all medical officers in the prisons or jails to provide basic and emergency mental health care.

5. Clause 33 of the Bill provides for the establishment of a Central Mental Health Authority.

6. Sub-clause (3) of clause 35 of the Bill provides for the salaries and allowances payable to the chairperson and other members of the Central Authority.

7. Item (e) of sub-clause (1) of clause 43 of the Bill makes provisions for training all persons including law enforcement officials, mental health professionals and other health professionals about the provisions and implementation of the proposed legislation.

8. Clause 45 of the Bill provides for the establishment of State Mental Health Authority.

9. Sub-clause (3) of clause 47 of the Bill provides for the salaries and allowances payable to the chairperson and other members of the State Authority.

10. Item (e) of sub-clause (1) of clause 55 of the Bill makes provisions for training all persons including law enforcement officials, mental health professionals and other health professionals about the provisions and implementation of the proposed legislation.

11. Clause 57 of the Bill provides that the Central Government may, after due appropriation made by Parliament by law in this behalf, make to the Central Mental Health Authority grants of such sums of money as the Central Government may think fit for being utilised for the purposes of the proposed legislation.

12. Sub-clause (2) of clause 58 of the Bill provides for the Central Mental Health Authority Fund to be applied for meeting the salary, allowances and other remuneration of the chairperson, other members, chief executive officer, other officers and employees of the Central Mental Health Authority and the expenses of the Central Mental Health Authority incurred in the discharge of its functions and for purposes of the proposed legislation.

13. Clause 61 of the Bill provides that the State Government may, after due appropriation made by State Legislature by law in this behalf, make to the State Authority grants of such sums of money as the State Government may think fit for being utilised for the purposes of the proposed legislation.

14. Sub-clause (2) of clause 62 of the Bill provides for the State Mental Health Authority Fund to be applied for meeting the salary, allowances and other remuneration of the chairperson, other members, chief executive officer, other officers and employees of the State Authority and the expenses of the State Authority incurred in the discharge of its functions and for purposes of the proposed legislation.

15. Clause 73 of the Bill provides for the constitution of the Mental Health Review Commission.

16. Sub-clause (3) of clause 77 of the Bill provides for the salaries and allowances payable to the president and other members of the Mental Health Review Commission.

17. Clause 80 of the Bill provides for the constitution of Mental Health Review Boards by the Mental Health Review Commission, with prior concurrence of the concerned State Government in the districts of that State.

18. Sub-clause (3) of clause 83 of the Bill provides for honorarium and other allowances payable to the chairperson and members of the Mental Health Review Board.

There is no easy way of estimating the full financial burden likely to be incurred if all the provisions of the proposed legislation if enacted were implemented in such a manner that all persons requiring such services were to be covered. However, some of these tasks are currently funded through approved plan schemes in selected districts which the Central Government intends to extend to the entire country in the XIIth Plan period. Some tasks which are currently not funded by the Central Government and which would be necessary should the proposed legislation be enacted, are also proposed to be funded through Plan schemes. Funding through Plan schemes for the implementation of the proposed legislation would need to continue in subsequent Plan periods also. Provisioning for health is not a one-time activity. Since health is a State subject under the Constitution, it is also expected that over time, the States will also contribute substantially to the implementation of programmes for the promotion of mental health and care and treatment of persons with mental illness, thereby, contributing to the implementation of the provisions of the Bill. However, the expenditure, whether recurring or non recurring, will be met out of the Consolidated Fund of India or Consolidated Fund of the concerned State.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 130 of the Bill empowers the appropriate Government to make rules to carry out the provisions of the proposed legislation. Sub-clause (2) of this clause enumerates the matters with respect to which rules may be made under this clause. These matters *inter alia*, relate to - (a) the manner of nomination of members of the Central Authority under sub-clause (2) of clause 34 ; (b) the salaries and allowances payable to, and the other terms and conditions of service of, the chairperson and other members of the Central Authority under sub-clause (3) of clause 35; (c) the procedure for registration (including the fees to be levied for such registration) of the mental health establishments under sub-clause (2) of clause 43; (d) the manner of nomination of members of the State Authority under sub-clause (2) of clause 46; (e) the salaries and allowances payable to, and the other terms and conditions of service of, the chairperson and other members of the State Authority under sub-clause (3) of clause 47; (f) the procedure for registration (including the fees to be levied for such registration) of the mental health establishments under sub-clause (2) of clause 55; (g) the form of accounts and other relevant records and annual statement of accounts under sub-clause (1) of clause 59; (h) the form in which and the time within which an annual report shall be prepared under clause 60; (i) the form of accounts and other relevant records and annual statement of accounts under sub-clause (1) of clause 63; (j) the form in which and the time within which an annual report shall be prepared under clause 64; (k) the form of application to be submitted by the mental health establishment with an undertaking that the mental health establishment fulfils the minimum standards, if any, specified by the Authority, under the *Explanation* to sub-clause (2) of clause 65; (l) the form of certificate of registration under sub-clause (3) of clause 65; (m) the form of application, the detail and fees to be accompanied with it under sub-clause (1) of clause 66; (n) the form of certificate of provisional registration containing particulars and information under sub-clause (4) of clause 66; (o) the fees for renewal of registration under sub-clause (11) of clause 66; (p) the person or persons (including representatives of the local community) for the purpose of conducting an audit of the registered mental health establishments under sub-clause (1) and fees to be charged by the Authority for conducting such audit under sub-clause (2) of clause 67; (q) the person or persons for the purpose of conducting an inspection or inquiry of the mental health establishments under sub-clause (1) of clause 68; (r) the manner of entry and search of a mental health establishment operating without registration under sub-clause (6) of clause 68; (s) the fees for issuing a duplicate certificate under sub-clause (2) of clause 70; (t) the form and manner in which the Authority shall maintain in digital format a register of mental health establishments, the particulars of the certificate of registration so granted in a separate register to be maintained under clause 71; (u) the salaries and allowances payable to, and the other terms and conditions of service of, the president and other members of the Commission under sub-clause (3) of clause 77; (v) the salaries and allowances payable to, and the other terms and conditions of service of, the officers and other employees of the Commission under sub-clause (3) of clause 79; (w) other disqualifications of president or members of the Commission under item (e) of sub-clause (1) of clause 82; (x) other disqualifications of chairperson or members of the Board under item (e) of sub-clause (2) of clause 82; (y) the honorarium and other allowances payable to, and the other terms and conditions of service of, the chairperson and members of the Board under sub-clause (3) of clause 83; (z) the form for furnishing periodical information under sub-clause (1) or sub-clause (2) of clause 119; (za) any other matter which is required to be, or may be, specified by rules or in respect of which provision is to be made by rules.

Clause 131 of the Bill empowers the Central Authority to make regulations, consistent with the provisions of the proposed legislation and the rules made thereunder, to carry out the provisions of the proposed legislation. Sub-clause (2) of this clause enumerates the matters with respect to which regulations may be made under this clause. These matters, *inter alia*, relate to —(a) the salaries and allowances payable to, and the other terms and

conditions of service (including the qualifications, experience and manner of appointment) of, the chief executive officer and other officers and employees of the Central Authority under sub-clause (3) of clause 40; (b) the times and places of meetings of the Central Authority and rules of procedure in regard to the transaction of business at its meetings (including quorum at such meetings) under sub-clause (1) of clause 44; (c) the minimum standards of facilities and services under clause (a); the minimum qualifications for the personnel engaged in mental health establishment under clause (b); provisions for maintenance of records and reporting under clause (c) and other conditions under clause (d), of sub-clause (4) of clause 65; (d) categories of different mental health establishments under item (a) of sub-clause (5) of clause 65; (e) the form of application to be made by the mental health establishment and the fees to be accompanied with it under sub-clause (12) of clause 66; (f) the manner of filing objections under sub-clause (14) of clause 66; (g) any other matter which is required to be, or may be, specified by regulations or in respect of which provision is to be made by regulations.

Clause 132 of the Bill empowers the Commission to make regulations, consistent with the provisions of the proposed legislation and the rules made thereunder, to carry out the provisions of the proposed legislation. Sub-clause (2) of this clause enumerates the matters with respect to which regulations may be made under this clause. These matters, *inter alia*, relate to — (a) additional regulations regarding the procedure of advance directive to protect the rights of persons with mental illness under sub-clause (3) of clause 12; (b) the times and places and rules of procedure in regard to the transaction of business at its meetings to be observed by the Commission and the Board under clause 87; (c) the procedure for advance directive under clause (c) of clause 89; (d) regulations for the purposes of carrying out the provisions of clauses 105 and 106; (e) any other matter which is required to be, or may be, specified by regulations or in respect of which provision is to be made by regulations.

Clause 133 of the Bill empowers the State Authority to make regulations, consistent with the provision of the proposed legislation and the rules made thereunder, to carry out the provisions of the proposed legislation. Sub-clause (2) of this clause enumerates the matters with respect to which regulations may be made under this clause. These matters, *inter alia*, relate to — (a) the minimum quality standards of mental health services under sub-clause (9) of clause 18; (b) the salaries and allowances payable to, and the other terms and conditions of service (including the qualifications, experience and manner of appointment) of, the chief executive officer and other officers and employees of the State Authority under sub-clause (3) of clause 52; (c) the manner in which the State Authority shall publish the list of registered mental health professionals under item (d) of sub-clause (1) of clause 55; (d) the times and places of meetings of the State Authority and rules of procedure in regard to the transaction of business at its meetings (including quorum at such meetings) under sub-clause (1) of clause 56; (e) the form of application to be made by the mental health establishment and the fees to be accompanied with it under sub-clause (12) of clause 66; (f) the manner of filing objections under sub-clause (14) of clause 66; (g) any other matter which is required to be, or may be, specified by regulations or in respect of which provision is to be made by regulations.

Clause 134 of the Bill provides that every rule made by the Central Government and every regulation made by the Central Authority and the Commission under the proposed legislation are required to be laid before each House of the Parliament. It also provides that every rule made by the State Government and every regulation made by the State Authority under the proposed legislation shall be laid before each House of the State Legislature where it consists of two Houses, or where such legislation consist of one House, before that House.

The matters in respect of which rules and regulations may be made under the aforesaid provisions are matters of procedure and administrative details and it is not practical to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

IV

BILL NO. LII OF 2013

A Bill further to amend the Indian Medical Council Act, 1956.

BE it enacted by Parliament in the Sixty-fourth Year of the Republic of India as follows:—

Short title
and
commencement.

1. (1) This Act may be called the Indian Medical Council (Amendment) Act, 2013.

(2) It shall be deemed to have come into force on the 15th day of May, 2013.

Amendment
of long title.

2. In the Indian Medical Council Act, 1956 (hereinafter referred to as the principal Act), for the long title, the following long title shall be substituted, namely:—

102 of 1956.

“An Act to provide for the constitution of the Medical Council of India and for the determination, co-ordination, maintenance and regulation of standards of medical education, the practice of medicine, maintenance of Indian Medical Register and to make endeavour in making available doctors in all States and for matters connected therewith or incidental thereto.”

Amendment
of section 3.

3. In section 3 of the principal Act,—

(a) in sub-section (1),—

(i) after clause (a), the following clause shall be inserted, namely:—

“(aa) one member, to represent the Union territories by rotation, to be nominated by the Central Government;”;

(ii) in clause (b), the following provisos shall be inserted, namely:

“Provided that where there is a Health University in a State, that University shall elect one representative for every ten medical colleges affiliated to it to represent such medical colleges:

Provided further that a Health University with less than ten medical colleges affiliated to it, shall also be eligible to elect one representative to represent such medical colleges:

Provided also that such number of representatives shall be reviewed by the Central Government after every four years;”;

(iii) clause (d) shall be omitted;

(b) in sub-section (2), the following proviso shall be inserted, namely:

“Provided that no person shall hold office as the President or, as the case may be, the Vice-President for more than two terms.”.

4. After section 3A of the principal Act, the following section shall be inserted, namely:—

“3AA. The Central Government shall, after the commencement of the Indian Medical Council (Amendment) Act, 2013, reconstitute the Council, by notification in the Official Gazette, and publish the names of the members nominated or elected to the Council under sub-section (1) of section 3 within a period not exceeding one hundred and eighty days:

Provided that the Board of Governors constituted under sub-section (4) of section 3A shall continue to exercise the powers and perform the functions of the Council till the new Council is reconstituted or for such period not exceeding one hundred and eighty days, whichever is earlier.”.

Insertion of
new section
3AA.
Reconstitution
of Council.

5. In section 4 of the principal Act, in sub-section (1),—

(a) the words, brackets and letter “or clause (d)” shall be omitted;

(b) the words, brackets, letter and figures “and any rules so made may provide that pending the preparation of the Indian Medical Register in accordance with the provisions of this Act, the members referred to in clause (d) of sub-section (1) of section 3 may be nominated by the Central Government instead of being elected as provided therein” shall be omitted.

Amendment
of section 4.

6. In section 7 of the principal Act,—

(a) in sub-section (1), for the words “five years”, the words “four years” shall be substituted;

(b) for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) Subject to the provisions of the Act, a member, whether nominated or elected, shall hold office for a term of four years.”;

(c) in sub-section (6), for the words “five years”, the words “four years” shall be substituted.

Amendment
of section 7.

7. After section 9 of the principal Act, the following section shall be inserted, namely:—

“9A. (1) The Council shall, subject to the provisions of the Act and rules made thereunder, take measures to determine, coordinate and maintain the standards of

Insertion of
new section 9A.

Functions of
Council.

medical education and practice in medicine, the Indian Medical Register and make endeavour in making available doctors in all States.

(2) Without prejudice to the generality of the foregoing provisions, the measures referred to in sub-section (1), may, *inter alia*, provide for all or any of the following matters, namely:—

(a) lay down the standards of professional ethics in the practice of medicine;

(b) grant or withdraw permission for establishment of medical college and course of study in medical education and ensure compliance of its terms and conditions for such permission;

(c) maintain the Indian Medical Register;

(d) render advice to the Central Government or the State Government on matters relating to the medical education and practice in medicine;

(e) facilitate medical education in the institutions situated outside the country;

(f) undertake and recommend to the Central Government or the State Government such measures as may be necessary to regulate medical education in or outside the country;

(g) organise seminars, symposiums and workshops in order to promote continuous medical education and practice in medicine; and

(h) perform such other functions as may be laid down in the rules made by the Central Government.”.

Amendment
of section 13.

8. In section 13 of the principal Act,—

(a) in sub-sections (2) and (3), for the words “a citizen of India”, the words “a citizen of India or an overseas citizen of India” shall respectively be substituted;

(b) in sub-section (4A), for the words “a citizen of India”, the words “a citizen of India or an overseas citizen of India” shall be substituted;

(c) sub-section (4B) and the proviso relating thereto shall be omitted;

(d) in sub-section (4C), for the words, brackets, figures and letters “sub-sections (4A) and (4B)”, the word, brackets, figure and letter “sub-section (4A)” shall be substituted;

(e) after sub-section (5), the following *Explanation* shall be inserted, namely:—

Explanation.—For the purposes of this section, the expression “overseas citizen of India” shall have the meaning assigned to it in clause (ee) of sub-section (1) of section 2 of the Citizenship Act, 1955.!

57 of 1955.

Amendment
of section 14.

9. In section 14 of the principal Act, in the proviso to sub-section (1), in clause (b), the words “for the time being for the purposes of teaching, research or charitable work” shall be omitted.

Amendment
of section 21.

10. In section 21 of the principal Act,—

(a) in sub-section (1), for the words “the names”, the words “the names and biometric details” shall be substituted;

(b) after sub-section (2), the following sub-section shall be inserted, namely:—

(2A) The Council shall, in addition to the Indian Medical Register referred to in sub-section (1), maintain the Medical Register in electronic form containing the particulars included in the Indian Medical Register.

Explanation.— For the purpose of this sub-section, the expression, “electronic form” shall have the meaning assigned to it in clause (r) of sub-section (1) of section 2 of the Information Technology Act, 2000.’

21 of 2000.

11. After section 30 of the principal Act, the following section shall be inserted, namely:—

“30A. (1) The President, Vice-President or any member of the Council may, by notice in writing under his hand addressed to the Central Government, resign from his office:

Provided that the President, Vice-President or any member of the Council shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of a period of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

(2) Notwithstanding anything contained in sub-section (1), the Central Government may remove from office the President, Vice -President, or any member of the Council, who—

(a) has been adjudged as an insolvent; or

(b) has become physically or mentally incapable of acting as such President, Vice-President, or other member; or

(c) is of unsound mind and stands so declared by a competent court; or

(d) has been convicted of an offence involving moral turpitude; or

(e) has acquired such financial or any other interest in any medical institution falling within the purview of the Council, which is likely to affect prejudicially the exercise of his functions as the President, Vice-President, or a member; or

(f) is unable to perform or has made persistent defaults—

(i) in the performance of the duties imposed on him under this Act or has exceeded or abused his position; or

(ii) either wilfully or without sufficient cause neglects to comply with the directions issued by the Central Government under sections 33A and 33B;

(g) has been guilty of proved misbehaviour or his continuance in office would be detrimental in public interest.

(3) No person shall be removed from his office on the grounds specified in clause (e) or clause (f) or clause (g) of sub-section (2), unless he has been given a reasonable opportunity of being heard in the matter.”

12. In section 32 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) In particular, and without prejudice to the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the manner of election of the Council under sub-section (1) of section 4;

Insertion of new section 30A.

Resignation, removal and suspension of President, Vice-President or members of Council.

Amendment of section 32.

(b) such other functions of the Council under clause (h) of sub-section (2) of section 9A as may be laid down by the Central Government;

(c) the conditions and payment of fees for filing of an appeal before the Central Government under sub-section (2) of section 24;

(d) any other matter which is required to be, or may be, provided by rules or in respect of which provision is to be made by rules.”.

Amendment of section 33.

13. In section 33 of the principal Act, for clause (ma), the following clause shall be substituted, namely:—

“(ma) the modalities for conducting screening test under sub-section (4A) of section 13;”.

Insertion of new sections 33A, 33B and 33C.

14. After section 33 of the principal Act, the following sections shall be inserted, namely:—

Power of Central Government to give directions.

“33A. (1) Without prejudice to the foregoing provisions of this Act, the Council shall, in the discharge of its functions and duties under this Act, be bound by such directions on questions of policy as the Central Government may give in writing to it from time to time.

(2) The decision of the Central Government whether a question is one of policy or not shall be final.

Powers of Central Government to direct regulations to be made or to amend regulations.

33B. (1) Where the Central Government considers it expedient so to do, it may, by order in writing, direct the Council to make any regulations or to amend or revoke any regulations already made by it, within such period as the Central Government may specify in this behalf.

(2) If the Council fails or neglects to comply with such order within the specified period, the Central Government may make the regulations or amend or revoke the regulations made by the Council, as the case may be, in such manner as the Central Government thinks fit.

Laying of rules and regulations.

33C. Every rule and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule, regulation or both Houses agree that the rule and regulation should not be made, the rule and regulation shall, thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.”.

Repeal and saving.

15. (1) The Indian Medical Council (Amendment) Ordinance, 2013 is hereby repealed.

Ord. 4 of 2013.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the said Ordinance, shall be deemed to have been done or taken under the corresponding provisions of the principal Act, as amended by this Act.

STATEMENT OF OBJECTS AND REASONS

The Indian Medical Council Act, 1956 was enacted for the purpose of reconstituting the Medical Council of India (the Council) and to provide for the maintenance of the Indian Medical Register and for matters connected therewith. The Act was amended, *inter alia*, by the Indian Medical Council (Amendment) Act, 2010 superseding the Council for one year with effect from the 15th May, 2010 and providing for the constitution of a Board of Governors of not more than seven persons to exercise the powers and to perform the functions of the Council under the said Act. Subsequently, the term of the Board of Governors was extended to one year at a time by amending the Act in 2011 and 2012 and as per the provisions of the Indian Medical Council (Amendment) Act, 2012 the Council has to be reconstituted within a period of three years from the date of its supersession, that is latest by the 14th May, 2013.

2. The Indian Medical Council Act, 1956 was amended by the Indian Medical Council (Amendment) Ordinance, 2013 to provide for the reconstitution of the Council and review the composition of the said Council so as to give representation to the Union territories and to remove the anomaly where States having larger number of medical colleges, but having formed a medical university, were having fewer seats in the Council as compared to States having fewer colleges affiliated to several Universities, by inserting a proviso in clause (b) of sub-section (1) of section 3.

3. The Council's main function as contained in the Indian Medical Council Act, 1956 is to make recommendations to the Central Government on matters relating to recognition of medical qualifications, determining the courses of study and examinations required to obtain such qualifications, inspection of examinations and maintenance of register of medical practitioners, etc. By the amendment of the said Act in 1993, the power to grant permission for establishment of new Medical Colleges, increase in admission capacity or for starting new or higher course of study or training in the established colleges was entrusted to the Central Government from the respective State Governments. For this purpose, the Council became a recommendatory body to the Central Government for taking final decisions in these matters. After reviewing the working of the Council in this area and the problems being faced, a need has been felt to empower the Central Government to give such directions to the Council wherever necessary on matters of policy and public importance and to ensure their proper compliance.

4. As Parliament was not in session and immediate action was required to be taken to extend the term of the Board of Governors of Medical Council of India beyond the 14th May, 2013 and to allow the Board to exercise powers till the Council is reconstituted and make necessary amendments to the Indian Medical Council Act, 1956, the Indian Medical Council (Amendment) Ordinance, 2013 was promulgated on 21st May, 2013.

5. The Indian Medical Council (Amendment) Bill, 2013, which seeks to replace the Indian Medical Council (Amendment) Ordinance, 2013, *inter alia*, provides for the following, namely:—

(a) to amend long title of the Indian Medical Council Act, 1956 (Act) so as to make it more comprehensive;

(b) to amend sub-section (2) of section 3 of the Act so as to provide that no person shall hold the post of President or Vice-President for more than two terms;

(c) to amend section 13 of the Act relating to recognition of medical qualification and provisional registration so as to recognise the medical qualifications granted to the citizen of India by medical institutions in India and to extend the benefit to the overseas citizens of India;

(d) to amend section 14 of the Act which recognises the medical practice by the persons having medical qualifications granted by medical institutions in any country outside India;

(e) to insert a new section 30A in the Act relating to resignation by the President, Vice-President and Members of the Council and the power of the Central Government to remove from the office the President, Vice-President or a Member; and

(f) to insert a new section 33A in the Act relating to power of the Central Government to give directions to the Council on the matters of policy and for making any regulation.

6. The proposed amendments will make the composition of the Council compact, more representative in character, and empower the Central Government to discharge its functions effectively to ensure proper development of medical education in the country.

7. The Bill seeks to replace the aforesaid Ordinance.

GHULAM NABI AZAD

FINANCIAL MEMORANDUM

Clause 4 of the Bill seeks to insert new section 3AA, so as to reconstitute the Medical Council of India within a period of one hundred and eighty days. The proviso to section 3AA provides that the Board of Governors (BOG) shall continue to exercise the powers and perform the functions of the Council till the new Council is reconstituted or for such period not exceeding one hundred and eighty days, whichever is earlier. The proposed amendment would automatically increase the term of the office of the Board of Governors (BOG) up to the 10th November, 2013. The Chairperson and other members, other than *ex-officio* members, of the Board of Governors shall be entitled to such sitting fee and other allowances as may be determined by the Central Government. It is expected that such expenditure on sitting fee and travelling and other allowances would be minimal and will be met from the funds of the Medical Council of India. Further, as expenditure would depend on the number of meetings of the Board of Governors during the current financial year, *i.e.*, 2013-14 recurring or non-recurring expenditure cannot be anticipated at this stage.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (2) of clause 12 of the Bill empowers the Central Government to make rules for carrying out the provisions of the proposed legislation on matters relating to—(a) the manner of election of the Council under sub-section (1) of section 4; (b) such other functions of the Council under clause (h) of sub-section (2) of section 9A as may be laid down by the Central Government; (c) the conditions and payment of fees for filing of an appeal before the Central Government under sub-section (2) of section 24; (d) any other matter which is required to be, or may be, provided by rules or in respect of which provision is to be made by rules.

2. The rules to be made under the proposed legislation shall be required to be laid before the Parliament.

3. The matters in respect of which rules may be made are matters of procedure and administrative detail and it is not practicable to provide for them in the Bill itself.

4. The delegation of legislative power is, therefore, of a normal character.

SHUMSHER K. SHERIFF,
Secretary-General.